

**THE CITY OF HUNTINGTON**

**Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)**

**BOND TRANSCRIPT**

**Table of Contents**

**BASIC DOCUMENTS**

1. Bond Ordinance
2. Bond Ordinance (Conformed Copy)
3. Supplemental Resolution
4. Loan Agreement
5. Public Service Commission Orders
6. Cross-Receipt for Bond and Bond Proceeds
7. Direction to Authenticate and Deliver Bonds
8. Specimen Bond

**OPINIONS OF COUNSEL**

9. Approving Opinion of Steptoe & Johnson, Bond Counsel
10. Opinions of Counsel to Issuer and Counsel to Sanitary Board
11. Title Opinion

## **CERTIFICATES**

12. General Certificate of Issuer and Attorney
13. Certificate as to Arbitrage
14. Certificate of Engineer, with Schedule A Attached
15. Certificate of Certified Public Accountant

## **DOCUMENTS OF THE ISSUER**

16. City Charter
17. City Council Rules and Regulations
18. Oaths of Office of City Officers and Councilmembers
19. Ordinance Creating Sanitary Board
20. Petition of Sanitary Board
21. Sewer Rate Ordinance
22. Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing
23. Minutes on Adoption and Enactment of Sewer Rate Ordinance
24. Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing
25. Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution
26. IRS Information Return (Form 8038-G) and Letter of Transmittal
27. Municipal Bond Commission New Issue Report

## **MISCELLANEOUS DOCUMENTS**

28. Acceptance by Bank One, West Virginia, National Association, of Appointment as Depository Bank
29. Acceptance by One Valley Bank, National Association, of Duties as Registrar
30. Certificate of Registration of Bonds
31. Registrar's Agreement
32. 1993 Bond Ordinance and Supplemental Resolution
33. NPDES Permit

11/10/97  
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**THE CITY OF HUNTINGTON**

**SEWER REVENUE BONDS, SERIES 1995  
(WEST VIRGINIA SRF PROGRAM)**

**BOND ORDINANCE**

**Table of Contents**

<b>Subject</b>		<b>Page</b>
<b>ARTICLE I</b>		
<b>STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS</b>		
Section 1.01	Authority for this Ordinance	1
Section 1.02	Findings	1
Section 1.03	Bond Legislation Constitutes Contract	4
Section 1.04	Definitions	4
<b>ARTICLE II</b>		
<b>AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT</b>		
Section 2.01	Authorization of Acquisition and Construction of the Project	19
<b>ARTICLE III</b>		
<b>AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT</b>		
Section 3.01	Authorization of Bonds	20

Section 3.02	Terms of Bonds	20
Section 3.03	Execution of Bonds	21
Section 3.04	Authentication and Registration	21
Section 3.05	Negotiability, Transfer and Registration	21
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	22
Section 3.07	Bonds not to be Indebtedness of the Issuer	22
Section 3.08	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	22
Section 3.09	Delivery of Bonds	23
Section 3.10	Form of Bonds	23
	FORM OF BOND	24
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement	32
Section 3.12	"Amended Schedule A" Filing	32

**ARTICLE IV  
[RESERVED]** 33

**ARTICLE V  
FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF**

Section 5.01	Establishment of Funds and Accounts with Depository Bank	34
Section 5.02	Establishment of Funds and Accounts with Commission	34
Section 5.03	System Revenues; Flow of Funds	34

**ARTICLE VI  
BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01	Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds	40
Section 6.02	Disbursements From the Bond Construction Trust Fund	40

**ARTICLE VII  
ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01	General Covenants of the Issuer	42
Section 7.02	Bonds not to be Indebtedness of the Issuer	42
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	42
Section 7.04	Rates	42
Section 7.05	Sale of the System	43
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	44

Section 7.07	Additional Parity Bonds	45
Section 7.08	Books; Records and Facilities	47
Section 7.09	Securities Law Compliance	49
Section 7.10	Operating Budget; Audit and Monthly Financial Report	49
Section 7.11	Engineering Services and Operating Personnel	49
Section 7.12	No Competing Franchise	50
Section 7.13	Enforcement of Collections	50
Section 7.14	No Free Services	51
Section 7.15	Insurance and Construction Bonds	51
Section 7.16	Mandatory Connections	53
Section 7.17	Completion of Project; Permits and Orders	54
Section 7.18	Compliance with Loan Agreement and Law	54
Section 7.19	Tax Covenants	54

**ARTICLE VIII  
INVESTMENT OF FUNDS; NON ARBITRAGE**

Section 8.01	Investments	56
Section 8.02	Arbitrage and Tax Exemption	57
Section 8.03	Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States	57

**ARTICLE IX  
DEFAULT AND REMEDIES**

Section 9.01	Events of Default	60
Section 9.02	Remedies	60
Section 9.03	Appointment of Receiver	60

**ARTICLE X  
DEFEASANCE**

Section 10.01	Defeasance of Bonds	63
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**ARTICLE XI  
MISCELLANEOUS**

Section 11.01	Amendment or Modification of Bond Legislation	64
Section 11.02	Bond Legislation Constitutes Contract	64
Section 11.03	Severability of Invalid Provisions	64
Section 11.04	Headings, Etc.	64
Section 11.05	Conflicting Provisions Repealed; Prior Ordinance	64
Section 11.06	Covenant of Due Procedure, Etc.	65

Section 11.07	Effective Date	65
Section 11.08	Statutory Notice and Public Hearing	65
	SIGNATURES	66
	CERTIFICATION	67
	EXHIBIT A	68

THE CITY OF HUNTINGTON

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF HUNTINGTON:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01.      Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02.      Findings. It is hereby found, determined and declared that:

A.    The City of Huntington (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Cabell and Wayne Counties of said State.

B.    The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants

of the Issuer that there be constructed certain additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of acquisition and construction of gravity and pressure sanitary sewerage lines, grinder pumps, manholes and other sewerage facilities to service the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, Miller Road and other areas, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection and transportation of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage system of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the "System") at an estimated cost of \$4,000,000 in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the City Clerk of the Issuer.

C. The Issuer intends to permanently finance a portion of such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 1995 (West Virginia SRF Program), in the total aggregate principal amount of not more than \$4,000,000 (the "Series 1995 Bonds"), initially to be represented by a single bond, to permanently finance a portion of costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 1995 Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 1995 Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1995 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 1995 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 20 years.

F. It is in the best interests of the Issuer that its Series 1995 Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), in form satisfactory to the Issuer, the Authority and the DEP, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on parity with the Series 1995 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds" or "Prior Bonds"), dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000, pursuant to an ordinance enacted by the Issuer on October 12, 1993, as supplemented by the supplemental resolution of the Issuer adopted November 3, 1993 (collectively, the "Prior Ordinance").

The Issuer has met the parity test requirements of the Prior Bonds and the Prior Ordinance, and the Series 1995 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1995 Bonds as to liens, pledge and/or source of and security for payment and in all other respects.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Prior Bonds and the Series 1995 Bonds and all payments into the all sinking funds, reserve accounts and other payments provided for herein and in the Prior Ordinance, all as such terms are hereinafter defined.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 1995 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval (or "grandfathering") of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 1995 Bonds or such final order will not be subject to appeal.

J. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Series 1995 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the

jurisdiction of the Issuer); and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(D) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year in which the Series 1995 Bonds are to be issued.

K. Pursuant to the Act, the Issuer has heretofore established/a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1995 Bonds for the purposes set forth herein.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 1995 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 1995 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 1995 Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 1995 Bonds, the Prior Bonds, and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1995 Bonds for the proceeds representing the purchase price of the Series 1995 Bonds or at least a de minimis portion thereof from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Chester Engineers, Inc., Huntington, West Virginia, or any qualified engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently constituted.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"Depreciation Fund" means the Depreciation Fund established by the Prior Ordinance and continued hereby.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer.

"Government Obligations" means direct and general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury), or obligations that are unconditionally guaranteed as to principal and interest by the United States of America, including (in the case of direct and general obligations of the United States of America) evidences of ownership of proportionate interests in future interest and principal payments of such obligations; provided that, investments in such proportionate interests shall be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying United States obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations; and (c) the underlying United States obligations are held in a special account separate from the custodian's general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments).

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means The City of Huntington, a municipal corporation and political subdivision of the State of West Virginia, in Cabell and Wayne Counties, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into among the Authority, the DEP and the Issuer, providing for the purchase of the Series 1995 Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Bond Year.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1995 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 1995 Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1995 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 1995 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1995 Bonds.

"Operating Expenses" unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, the SRF Administrative Fee, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" or "Series 1993 Bonds" means the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993, dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000.

"Prior Ordinance" means, collectively, the ordinance of the Issuer enacted on October 12, 1993, as supplemented by the supplemental resolution of the Issuer adopted November 3, 1993, authorizing the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit

and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of gravity and pressure sanitary sewerage lines, grinder pumps, manholes and other sewerage facilities to service the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, Miller Road and other areas, together with all appurtenant facilities.

"Qualified Investments" means and includes the following:

1. (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government sponsored agencies which are not backed by the full faith and credit of the United States of America:

-Federal Home Loan Mortgage Corporation (FHLMC)

Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

Senior Debt obligations

-Farm Credit Banks (formerly, Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)

Consolidated system-wide bonds and notes

- Federal Home Loan Banks (FHL Banks)  
Consolidated debt obligations
- Federal National Mortgage Association (FNMA)  
Senior debt obligations  
Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
- Student Loan Marketing Association (SLMA)  
Senior debt obligations (excluded are securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date)
- Financing Corporation (FICO)  
Debt obligations
- Resolution Funding Corporation (REFCORP)  
Debt obligations

4. Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 30 days) of any bank the short-term obligations of which are rated 'A-1' or better by S&P.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$5 million.

6. Commercial paper (having original maturities of not more than 270 days) rated 'A-1+' by S&P and 'Prime-1' by Moody's.

7. Money market funds rated 'AAm' or 'AAm-G' by S&P, or better.

8. "State Obligations," which means:

A. Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated 'A3' by Moody's and 'A' by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

B. Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated 'A-1+' by S&P and 'Prime-1' by Moody's.

C. Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (A) above and rated 'AA' or better by S&P and 'Aa' or better by Moody's.

9. Pre-refunded municipal obligations rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service meeting the following requirements:

A. the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

B. the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

C. the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

D. the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

E. no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification; and

F. the cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements:

A. With any domestic bank the long term debt of which is rated 'AA' or better by S&P (so long as an opinion is rendered that the repurchase agreement is a "repurchase agreement" and a "qualified

financial contract" as defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and that such bank is subject to FIRREA), or any foreign bank the long term debt of which is rated at least 'AA' by S&P and 'AAA' by S&P and at least 'Aa' by Moody's; provided the term of such repurchase agreement is for one year or less.

B. With (1) any broker-dealer with "retail customers" which has, or the parent company of which has, long-term debt rated at least 'AA' by S&P and 'Aa' by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation (SIPC); or (2) any other entity approved by Financial Security, provided that:

a. The market value of the collateral is maintained (i) for United States Treasury Securities at the levels shown below under "Collateral Levels for United States Treasury Obligations" and (ii) for other collateral, at levels acceptable to Financial Security;

b. Failure to maintain the requisite collateral percentage will require the Issuer to liquidate the collateral.

c. The Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") has possession of the collateral or the collateral has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

d. The repurchase agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

e. The transferor represents that the collateral is free and clear of any third-party liens or claims;

f. An opinion is rendered that the repurchase agreement is a "repurchase agreement" as defined in the United States Bankruptcy Code and, if the provider is a bank, that

such bank is subject to FIRREA and the repurchase agreement is a "qualified financial contract" as defined in FIRREA;

g. There is or will be a written agreement governing every repurchase transaction;

h. The Issuer represents that it has no knowledge of any fraud involved in the repurchase transaction; and

i. The Issuer receives the opinion of counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such repurchase agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms.

11. Investment agreements with (A) a domestic bank the long-term debt of which is rated at least 'AA' by S&P and 'Aa' by Moody's (so long as an opinion is rendered that the bank is subject to FIRREA); or (B) a foreign bank the long-term debt of which is rated 'AAA' by S&P and at least "Aa' by Moody's, or at least 'AA' by S&P and 'Aaa' by Moody's; provided, that, by the terms of the investment agreement:

(1) interest payments are to be made at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice (which notice may be amended or withdrawn at any time prior to the specified withdrawal date); provided that the Ordinance specifically requires the Issuer to give notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(3) the investment agreement shall state that is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof;

(4) a fixed guaranteed rate of interest is to be paid on invested funds and all future deposits, if any, required to be made

to restore the amount of such funds to the level specified under the Ordinance;

(5) the term of the investment agreement does not exceed seven years or such longer term as shall be approved by the Bond Insurer;

(6) the Issuer receives the opinion of domestic counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in form and substance acceptable;

(7) the investment agreement shall provide that if during its term

(a) the provider's rating by either S&P or Moody's falls below 'AA' or 'Aa,' respectively, or, with respect to a foreign bank, below the ratings of such provider at the delivery date of the investment agreement, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, either (i) collateralize the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") United States Treasury Obligations which are free and clear of any third-party liens or claims at the Collateral Levels set forth below; or (ii) repay the principal of and accrued but unpaid interest on the investment, and

(b) the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below 'A,' or, with respect to a foreign bank, below "AA" or "Aa" by S&P or Moody's, as appropriate, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Issuer; and

(8) The investment agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(9) the investment agreement must provide that if during its term

(a) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate, and

(b) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate.

(10) Any State-administered pool investment fund in which the Issuer is statutorily permitted or required to invest.

(11) Subject to the prior written approval of the Bond Insurer, such other obligations as shall be permitted to be legal investments of the Issuer by the laws of the State.

**COLLATERAL LEVELS FOR UNITED STATES TREASURY OBLIGATIONS**

	Remaining maturity				
	1 year <u>or less</u>	5 years <u>or less</u>	10 years <u>or less</u>	15 years <u>or less</u>	30 years <u>or less</u>
Frequency of valuation					
Daily	102	105	106	108	114
Weekly	103	111	112	114	120
Monthly	105	117	120	125	133
Quarterly	107	120	130	133	140

**VALUATION REQUIREMENTS:**

- (1) On each valuation date the Issuer, the Paying Agent, or the custodian who shall confirm to the Issuer and the Paying Agent, shall, at the cost of the provider, value the market value (exclusive of accrued interest) of the collateral, which market value will be an amount equal to the requisite collateral percentage times the principal amount of the investment and unpaid accrued interest thereon that is being secured;
- (2) In the event the collateral level is below its collateral percentage on a valuation date, such percentage shall be restored within the following restoration periods: one business day for daily valuations, two business days for weekly and monthly valuations, and one month for quarterly valuations. [The use of different restoration periods affect the requisite collateral percentage.];
- (3) The Issuer shall terminate the repurchase agreement or investment agreement, as appropriate, upon a failure to maintain the requisite collateral percentage after the restoration period and, if not paid by the counterparty in federal funds against transfer of the collateral, liquidate the collateral.

(f) The prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Reserve Account.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 1995 Bonds.

"Reserve Account Requirement" means, collectively, the respective amounts required to be on deposit in any reserve account for the Bonds.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinance and continued hereby.

"Series 1993 Bonds" or "Prior Bonds" means the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993, dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000.

"Series 1993 Bonds Redemption Account" means the Redemption Account established by the Prior Ordinance for the Series 1993 Bonds and continued hereby.

"Series 1993 Bonds Reserve Account" means the Reserve Account established by the Prior Ordinance for the Series 1993 Bonds and continued hereby.

"Series 1993 Bonds Sinking Fund" means the Sinking Fund established by the Prior Ordinance for the Series 1993 Bonds and continued hereby.

"Series 1995 Bonds" means the not more than \$4,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1995 (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"Series 1995 Bonds Reserve Account" means the Series 1995 Bonds Reserve Account established in the Series 1995 Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1995 Bonds Reserve Account Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1995 Bonds in the then current or any succeeding year.

"Series 1995 Bonds Sinking Fund" means the Series 1995 Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking fund established for the Prior Bonds and the Series 1995 Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 1995 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1995 Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation or the Prior Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, consisting of a sewage treatment plant, collection and transportation lines, lift stations, pumps and all appurtenant facilities, now owned by the Issuer or any integral part thereof, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a municipal sewage treatment and collection system, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for said sewage treatment and collection system from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$4,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the SRF Program. The cost of the Project is estimated not to exceed \$4,000,000, all of which will be obtained from proceeds of the Series 1995 Bonds.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 1995 Bonds, funding a reserve account for the Series 1995 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1995 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be issued the negotiable Series 1995 Bonds of the Issuer, in an aggregate principal amount of not more than \$4,000,000. The Series 1995 Bonds shall be issued as a single bond, designated "Sewer Revenue Bonds, Series 1995 (West Virginia SRF Program)", and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1995 Bonds remaining after funding of the Series 1995 Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 1995 Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 1995 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1995 Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1995 Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1995 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1995 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from the date so specified therein.

**Section 3.03. Execution of Bonds.** The Series 1995 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 1995 Bonds shall cease to be such officer of the Issuer before the Series 1995 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 1995 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

**Section 3.04. Authentication and Registration.** No Series 1995 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 1995 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

**Section 3.05. Negotiability, Transfer and Registration.** Subject to the provisions for transfer of registration set forth below, the Series 1995 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 1995 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 1995 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 1995 Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 1995 Bonds or transferring the registered Series 1995 Bonds are exercised, all Series 1995 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 1995 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 1995 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 1995 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 1995 Bonds or, in the case of any proposed redemption of Series 1995 Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 1995 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1995 Bonds Reserve Account. No holder or holders of the Series 1995 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1995 Bonds or the interest thereon.

**Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds.** The payment of the debt service of all Series 1995 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 1995 Bonds and to make the payments into the respective Sinking Funds, the Reserve Accounts therein, and the Depreciation Fund, and all other payments hereinafter set forth, are hereby irrevocably pledged to the payment of the principal of and interest on the Prior Bonds and the Series 1995 Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

**Section 3.09. Delivery of Bonds.** The Issuer shall execute and deliver the Series 1995 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1995 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 1995 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1995 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 1995 Bonds.

**Section 3.10. Form of Bonds.** The text of the Series 1995 Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF HUNTINGTON  
SEWER REVENUE BOND,  
SERIES 1995  
(WEST VIRGINIA SRF PROGRAM)

No. R-\_\_\_\_\_

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF HUNTINGTON, a municipal corporation and political subdivision of the State of West Virginia in Cabell County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 199 \_\_\_\_, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 199 \_\_\_\_, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia

Division of Environmental Protection (the "DEP), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated \_\_\_\_\_, 199\_\_.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) [to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iii)] to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 199\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 199\_\_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

**THIS BOND IS ISSUED ON PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993, DATED NOVEMBER 1, 1993, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,100,000 (THE "PRIOR BONDS").**

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1995 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 1995 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of

operation, repair and maintenance of the System, and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds, so long as the Prior Bonds are outstanding, and thereafter, 115% of such amount; provided however, that, if the Prior Bonds are no longer outstanding and so long as there exists in the Series 1995 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the reserve accounts established for any other obligations outstanding prior to or on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the Costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF HUNTINGTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated \_\_\_\_\_, 199\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 1995 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 199\_\_.

ONE VALLEY BANK, NATIONAL  
ASSOCIATION, as Registrar

\_\_\_\_\_  
Authorized Officer

(Form of)

**EXHIBIT A**

**RECORD OF ADVANCES**

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	
	<b>TOTAL</b>	\$	<u>                    </u>

**EXHIBIT B**  
**SCHEDULE OF ANNUAL DEBT SERVICE**

(Form of)

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_, Attorney to transfer the said Bond  
on the books kept for registration of the within Bond of the said Issuer with full power of  
substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 1995 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. "Amended Schedule A" Filing. Within 60 days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinance);
  - (2) Depreciation Fund (established by the Prior Ordinance);
- and
- (3) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 1993 Bonds Sinking Fund (established by the Prior Ordinance);
  - (a) Within the Series 1993 Bonds Sinking Fund:
    - (i) Series 1993 Bonds Reserve Account (established by the Prior Ordinance); and
    - (ii) Series 1993 Bonds Redemption Account (established by the Prior Ordinance);
- (2) Series 1995 Bonds Sinking Fund;
  - (a) Within the Series 1995 Bonds Sinking Fund, the Series 1995 Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and in this Bond Legislation and shall

be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinance and in this Bond Legislation. All moneys in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and, simultaneously, (i) remit to the Commission the amounts required by the Prior Ordinance to be deposited in the Series 1993 Bonds Sinking Fund for payment of the principal of and interest on the Series 1993 Bonds, (ii) commencing 4 months prior to the first date of payment of interest on the Series 1995 Bonds for which interest has not been capitalized or as required in the Loan Agreement, remit to the Commission for deposit in the Series 1995 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 1995 Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1995 Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (iii) commencing 4 months prior to the first date of payment of principal of the Series 1995 Bonds, remit to the Commission for deposit in the Series 1995 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 1995 Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1995 Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and, simultaneously, (i) remit to the Commission the amount required by the Prior Ordinance to be deposited in the Series 1993 Bonds Reserve Account, and (ii) commencing 3 months prior to the first date of payment of principal of the Series 1995 Bonds, if not fully funded upon issuance of the Series 1995 Bonds, remit to the Commission for deposit in the Series 1995 Bonds Reserve

Account, an amount equal to 1/120 of the Series 1995 Bonds Reserve Account Requirement; provided, that no further payments shall be made into the Series 1995 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1995 Bonds Reserve Account Requirement.

(4) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the first month in which interest shall be payable from the Revenue Fund and as previously set forth in the Prior Ordinance and not in addition thereto, transfer from the Revenue Fund to the Depreciation Fund, an amount equal to not less than 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Reserve Accounts.

Withdrawals and disbursements may be made by the Issuer from the Depreciation Fund only for the following purposes and in the following order of priority:

(a) To make up any deficiency in the Reserve Accounts (so that the amount on deposit therein is at least equal to the Reserve Account Requirement), or to reimburse in whole or in part any issuer of a reserve account letter of credit in the event of a draw thereon;

(b) For the payment of the principal (including the principal amount to be paid under the mandatory redemption schedules) of or interest on the Bonds, but only in the event that at the time of such withdrawal there are not sufficient funds for such purpose in the Sinking Funds (excluding the Reserve Accounts);

(c) For the payment of the reasonable costs of land and depreciable renewals, repairs, extensions, improvements and additions to the System;

(d) Upon resolution of the Board and the Issuer, moneys in the Depreciation Fund in excess of \$1,000,000 may be used for optional redemption or for purchase of Bonds. In the event of purchase of Bonds, the Issuer may direct the purchase of Bonds offered for sale at the lowest price below the redemption price of such Bonds.

(5) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining Net Revenues to payment of debt service on subordinate bonds, notes, certificates or obligations of the System. Any excess of moneys then remaining in the Revenue Fund may be used for any lawful purpose of the System.

(6) If on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

Moneys in the Series 1995 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1995 Bonds as the same shall become due. Moneys in the Series 1995 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1995 Bonds as the same shall come due, when other moneys in the Series 1995 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1995 Bonds Sinking Fund and the Series 1995 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1995 Bonds and then to the next ensuing principal payment due thereon.

The Issuer shall restore any withdrawals from the Reserve Accounts which have the effect of reducing the assets therein below the Reserve Account Requirement, first, from the Depreciation Fund, and then from the first Net Revenues available after all other required payments to the Sinking Funds, including any deficiencies for prior payments have been made in full; provided, that the Issuer shall not be required to restore such deficiency when the aggregate amount of funds in the Sinking Funds, including the Reserve Accounts therein, are at least equal to the aggregate amount of Bonds issued pursuant to the Prior Ordinance and this Bond Legislation then Outstanding, plus the amount of interest due or thereafter to become due on said Bonds then Outstanding.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the

maximum provided and required to be paid into the concomitant sinking fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such sinking fund.

The Issuer shall not be required to make any further payments into the Series 1995 Bonds Sinking Fund, or into the Series 1995 Bonds Reserve Account therein when the aggregate amount of funds in said Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal and interest payments, and any payments made for the purpose of funding a deficiency in any Reserve Account, shall be made on a parity and pro rata, with respect to the Prior Bonds and Series 1995 Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1995 Bonds Sinking Fund created hereunder, and all amounts required for the Series 1995 Bonds Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 1995 Bonds Sinking Fund and the Series 1995 Bonds Reserve Account shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required hereunder.

Moneys in the Series 1995 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1995 Bonds Sinking Fund, including the Series 1995 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1995 Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 1995 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the Loan Agreement.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this Section, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Depreciation Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01.      Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Series 1995 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1995 Bonds, there shall first be deposited with the Commission in the Series 1995 Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1995 Bonds for the period commencing on the date of issuance of the Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1995 Bonds, there shall be deposited with the Commission in the Series 1995 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 1995 Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 1995 Bonds, such moneys shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 1995 Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 1995 Bonds shall be used to fund the Series 1995 Bonds Reserve Account, if not funded upon issuance of the Series 1995 Bonds, in an amount not to exceed the Series 1995 Bonds Reserve Requirement; provided that, in no event shall more than 10% of the proceeds of the Series 1995 Bonds be deposited in the Series 1995 Bonds Reserve Account.

Section 6.02.      Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 1995 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01.      General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1995 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 1995 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 1995 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02.      Bonds not to be Indebtedness of the Issuer. The Series 1995 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 1995 Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1995 Bonds or the interest thereon.

Section 7.03.      Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 1995 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1995 Bonds and to make the payments into the respective Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Prior Bonds and the Series 1995 Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04.      Rates. Prior to the issuance of the Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the City Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for

contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than the sum of (i) 120% of the Maximum Annual Debt Service on the Bonds in any Fiscal Year, so long as the Prior Bonds are Outstanding, and thereafter 115% of such amount; provided that, in the event the Prior Bonds are no longer outstanding and an amount equal to or in excess of the Series 1995 Bonds Reserve Account Requirement is on deposit in the Series 1995 Bonds Reserve Account and any reserve accounts for obligations prior to or on a parity with the Series 1995 Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the Maximum Annual Debt Service on the Bonds in any Fiscal Year; and (ii) the amount, if any, required to be deposited in the Reserve Accounts in order to satisfy the Reserve Account Requirement within a period of not more than 12 months, assuming equal payments are made each month. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, loan, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority.

So long as the Series 1995 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Board shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Board may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Board shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Council may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Depreciation Fund. Such payments of such proceeds into the Depreciation Fund shall reduce the amounts required to be paid into said fund by other provisions of the Prior Ordinance and this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Article X, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

**Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances.** Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation and the Prior Ordinance at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in the Prior Ordinance and in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Additional Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no additional parity Bonds, as in this section defined, payable out of the revenues of the System, shall be issued after the issuance of the Series 1995 Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the acquisition and construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the increased annual Net Revenues expected to be received after the date of issuance of such parity Bonds shall, so long as any of the Prior Bonds are outstanding, not be less than 120% of the Maximum Annual Debt Service, and thereafter, shall not be less than 115% of the Maximum Annual Debt Service, on the following:

- (1) The Prior Bonds and the Series 1995 Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinance and this Bond Legislation then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "increased annual Net Revenues expected to be received" as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such additional parity Bonds, and the increased Net Revenues to be available as a result of existing additional customers required by law to be served by the System upon completion of the facilities to be financed with the proceeds of any such additional parity Bonds, and shall not exceed the amount to be stated in the aforementioned certificate of Independent Accountants, which shall be filed in the office of the City Clerk of the Issuer prior to the issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Prior Bonds and the Series 1995 Bonds, and all the covenants and other provisions of the Prior Ordinance and this Bond Legislation (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Prior Bonds and the Series 1995 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in the Prior Ordinance and this Bond Legislation required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to the Prior Ordinance and this Bond Legislation.

No additional parity Bonds shall be valid unless authenticated in accordance with the Prior Ordinance and this Bond Legislation. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by the Prior Ordinance and this Bond Legislation, modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the revenues of the System of which is subject to the prior and superior lien of the Bonds on such revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made in accordance with the Prior Ordinance and this Bond Legislation have first been paid. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for

payment from such revenues, with the Bonds except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in the Prior Ordinance and this Bond Legislation on account of the Bonds then Outstanding (excluding the Depreciation Fund), and any other payments provided for in the Prior Ordinance and this Bond Legislation, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The Issuer may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

**Section 7.08. Books; Records and Facilities.** The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be

maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Issuer shall direct.

The Issuer shall file with the Consulting Engineers, the Authority and the DEP, or any other original purchaser of the Series 1995 Bonds, and shall mail in each year to any Holder or Holders of the Series 1995 Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Accountants in compliance with OMB Circular 128 and the Single Audit Act and shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of the Series 1995 Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's operation and maintenance expenses and debt service requirements.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the

powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.10. Operating Budget; Audit and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and

construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

**Section 7.12. No Competing Franchise.** To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

**Section 7.13. Enforcement of Collections.** The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

**Section 7.14. No Free Services.** The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

**Section 7.15. Insurance and Construction Bonds.** A. The Issuer hereby covenants and agrees that so long as the Series 1995 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

- (1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the event of any damage to or destruction of any portion of the System, the

Board will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Board will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Board and the Issuer during construction of the Project in the full insurable value thereof.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than is customarily carried by municipalities of equivalent size with respect to works and properties similar to the System to protect the Issuer and the Board from claims for bodily injury and/or death and from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer and the Board from claims arising out of operation or ownership of motor vehicles of or for the System, provided that, the Board, with the review of an insurance consultant and the concurrence of the Issuer, may elect to self-insure. If the Issuer determines in good faith that any required insurance is not commercially available at a reasonable cost with reasonable terms, it shall engage an insurance consultant to verify the determination and to make recommendations regarding the types, amounts and provisions of any such insurance that should be purchased or funded by the Issuer, taking into consideration the costs and practices of other municipal water and sewer systems of similar size and type in the State to the extent that such information is available. The Issuer may, upon resolution adopted in good faith and upon the recommendations of the insurance consultant, adopt alternate or supplemental risk management programs which the Issuer determines to be reasonable, including the right to self-insure and participate in captive insurance companies.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Board and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board having custody of the revenues or of any

other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

**Section 7.16. Mandatory Connections.** The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the sewerage facilities portion of the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the sewerage facilities portion of the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the sewerage facilities portion of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the sewerage facilities portion of the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. **PRIVATE BUSINESS USE LIMITATION.** The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1995 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1995 Bonds during the term thereof is, under the terms of the Series 1995 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1995 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1995 Bonds during the term thereof is, under the terms of the Series 1995 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for

said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1995 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1995 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

**B. PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1995 Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

**C. FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1995 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**D. INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1995 Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

**E. FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 1995 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01.      Investments. The Issuer shall invest and reinvest, and shall instruct the Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Reserve Accounts shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Commission to semiannually transfer from the Reserve Accounts to the Sinking Funds any earnings on the moneys deposited therein and any other funds in excess of the Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in the Reserve Accounts an amount at least equal to the Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Reserve Accounts, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Reserve Accounts shall, at any

time, be less than the applicable Reserve Account Requirement, the applicable Bond Insurer or Bondholder shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Net Revenues after required deposits to the Sinking Funds and otherwise in accordance with the Prior Ordinance and this Bond Legislation.

(D) All amounts representing accrued and capitalized interest shall be held by the Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Sinking Funds may be invested by the Commission in the West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 8.02. Arbitrage and Tax Exemption.** The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 1995 Bonds which would cause the Series 1995 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 1995 Bonds) so that the interest on the Series 1995 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

**Section 8.03. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States.** In accordance with Section 148 (f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Series 1995 Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 1995 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private

activity bonds) issued by the Issuer during the calendar year in which the Series 1995 Bonds are issued does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Series 1995 Bonds. For purposes of the first paragraph of Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1995 Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1995 Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay from any lawful sources available therefor, to the United States such amount, plus a penalty equal to 50% of the rebate amount not paid, plus interest on that amount, unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issue exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 1995 Bonds subject to rebate. The Issuer shall

also furnish the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01.      Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any Bonds; or
- (2) If default occurs in the Issuer's or the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Bonds set forth in this Bond Legislation, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer or Issuer, as appropriate shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer or Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02.      Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 1995 Bonds shall be on a parity with the Prior Bonds.

Section 9.03.      Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the

Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and

making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Series 1995 Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1995 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 1995 Bonds from gross income for federal income tax purposes.

Series 1995 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1995 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1995 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1995 Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1995 Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 1995 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 1995 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 1995 Bonds shall be made without the consent in writing of the Registered Owners of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 1995 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 1995 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall

control (unless less restrictive), so long as the Prior Bonds or any portion thereof are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Herald-Dispatch, a newspaper published and of general circulation in The City of Huntington, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: November 13, 1995

Passed on Second Reading: November 27, 1995

Passed on Final Reading  
Following Public  
Hearing: December 11, 1995



\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF HUNTINGTON on the 11th day of December, 1995.

Dated: November 25, 1997.

[SEAL]

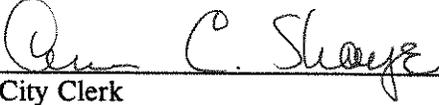
  
\_\_\_\_\_  
City Clerk

EXHIBIT A

Loan Agreement included in bond transcript as Document No. 3

10/24/97  
435500/94001



**CONFORMED COPY**

**Reflects redesignation set forth in the  
Supplemental Resolution adopted November 10, 1997**

**Inwood Drive Project**

**THE CITY OF HUNTINGTON**

**SEWER REVENUE BONDS, SERIES 1997  
(WEST VIRGINIA SRF PROGRAM)**

**BOND ORDINANCE**

**Table of Contents**

**Subject** **Page**

**ARTICLE I  
STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01	Authority for this Ordinance	1
Section 1.02	Findings	1
Section 1.03	Bond Legislation Constitutes Contract	4
Section 1.04	Definitions	4

**ARTICLE II  
AUTHORIZATION OF ACQUISITION AND CONSTRUCTION  
OF THE PROJECT**

Section 2.01	Authorization of Acquisition and Construction of the Project	19
--------------	--	----

**ARTICLE III  
 AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND  
 SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN  
 AGREEMENT**

Section 3.01	Authorization of Bonds	20
Section 3.02	Terms of Bonds	20
Section 3.03	Execution of Bonds	21
Section 3.04	Authentication and Registration	21
Section 3.05	Negotiability, Transfer and Registration	21
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	22
Section 3.07	Bonds not to be Indebtedness of the Issuer	22
Section 3.08	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	22
Section 3.09	Delivery of Bonds	23
Section 3.10	Form of Bonds	23
	<b>FORM OF BOND</b>	24
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement	32
Section 3.12	"Amended Schedule A" Filing	32

**ARTICLE IV  
 [RESERVED]** 33

**ARTICLE V  
 FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF**

Section 5.01	Establishment of Funds and Accounts with Depository Bank	34
Section 5.02	Establishment of Funds and Accounts with Commission	34
Section 5.03	System Revenues; Flow of Funds	34

**ARTICLE VI  
 BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01	Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds	40
Section 6.02	Disbursements From the Bond Construction Trust Fund	40

**ARTICLE VII  
 ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01	General Covenants of the Issuer	42
Section 7.02	Bonds not to be Indebtedness of the Issuer	42
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	42

Section 7.04	Rates	42
Section 7.05	Sale of the System	43
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	44
Section 7.07	Additional Parity Bonds	45
Section 7.08	Books; Records and Facilities	47
Section 7.09	Securities Law Compliance	49
Section 7.10	Operating Budget; Audit and Monthly Financial Report	49
Section 7.11	Engineering Services and Operating Personnel	49
Section 7.12	No Competing Franchise	50
Section 7.13	Enforcement of Collections	50
Section 7.14	No Free Services	51
Section 7.15	Insurance and Construction Bonds	51
Section 7.16	Mandatory Connections	53
Section 7.17	Completion of Project; Permits and Orders	54
Section 7.18	Compliance with Loan Agreement and Law	54
Section 7.19	Tax Covenants	54

### **ARTICLE VIII**

#### **INVESTMENT OF FUNDS; NON ARBITRAGE**

Section 8.01	Investments	56
Section 8.02	Arbitrage and Tax Exemption	57
Section 8.03	Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States	57

### **ARTICLE IX**

#### **DEFAULT AND REMEDIES**

Section 9.01	Events of Default	60
Section 9.02	Remedies	60
Section 9.03	Appointment of Receiver	60

### **ARTICLE X**

#### **DEFEASANCE**

Section 10.01	Defeasance of Bonds	63
---------------	---------------------	----

### **ARTICLE XI**

#### **MISCELLANEOUS**

Section 11.01	Amendment or Modification of Bond Legislation	64
Section 11.02	Bond Legislation Constitutes Contract	64
Section 11.03	Severability of Invalid Provisions	64
Section 11.04	Headings, Etc.	64

Section 11.05	Conflicting Provisions Repealed; Prior Ordinance	64
Section 11.06	Covenant of Due Procedure, Etc.	65
Section 11.07	Effective Date	65
Section 11.08	Statutory Notice and Public Hearing	65
	SIGNATURES	66
	CERTIFICATION	67
	EXHIBIT A	68

THE CITY OF HUNTINGTON

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1997 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF HUNTINGTON:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01.      Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02.      Findings. It is hereby found, determined and declared that:

A.    The City of Huntington (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Cabell and Wayne Counties of said State.

B.    The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants

of the Issuer that there be constructed certain additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of acquisition and construction of gravity and pressure sanitary sewerage lines, grinder pumps, manholes and other sewerage facilities to service the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, Miller Road and other areas, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection and transportation of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage system of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the "System") at an estimated cost of \$4,000,000 in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the City Clerk of the Issuer.

C. The Issuer intends to permanently finance a portion of such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), in the total aggregate principal amount of not more than \$4,000,000 (the "Series 1997 Bonds"), initially to be represented by a single bond, to permanently finance a portion of costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 1997 Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 1997 Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1997 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 1997 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 20 years.

F. It is in the best interests of the Issuer that its Series 1997 Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), in form satisfactory to the Issuer, the Authority and the DEP, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on parity with the Series 1997 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds" or "Prior Bonds"), dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000, pursuant to an ordinance enacted by the Issuer on October 12, 1993, as supplemented by the supplemental resolution of the Issuer adopted November 3, 1993 (collectively, the "Prior Ordinance").

The Issuer has met the parity test requirements of the Prior Bonds and the Prior Ordinance, and the Series 1997 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1997 Bonds as to liens, pledge and/or source of and security for payment and in all other respects.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Prior Bonds and the Series 1997 Bonds and all payments into the all sinking funds, reserve accounts and other payments provided for herein and in the Prior Ordinance, all as such terms are hereinafter defined.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 1997 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval (or "grandfathering") of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 1997 Bonds or such final order will not be subject to appeal.

J. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Series 1997 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the

jurisdiction of the Issuer); and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(D) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year in which the Series 1997 Bonds are to be issued.

K. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1997 Bonds for the purposes set forth herein.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 1997 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 1997 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 1997 Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 1997 Bonds, the Prior Bonds, and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1997 Bonds for the proceeds representing the purchase price of the Series 1997 Bonds or at least a de minimis portion thereof from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Chester Engineers, Inc., Huntington, West Virginia, or any qualified engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently constituted.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"Depreciation Fund" means the Depreciation Fund established by the Prior Ordinance and continued hereby.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer.

"Government Obligations" means direct and general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury), or obligations that are unconditionally guaranteed as to principal and interest by the United States of America, including (in the case of direct and general obligations of the United States of America) evidences of ownership of proportionate interests in future interest and principal payments of such obligations; provided that, investments in such proportionate interests shall be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying United States obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations; and (c) the underlying United States obligations are held in a special account separate from the custodian's general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments).

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means The City of Huntington, a municipal corporation and political subdivision of the State of West Virginia, in Cabell and Wayne Counties, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into among the Authority, the DEP and the Issuer, providing for the purchase of the Series 1997 Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Bond Year.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1997 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 1997 Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1997 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 1997 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1997 Bonds.

"Operating Expenses" unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, the SRF Administrative Fee, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" or "Series 1993 Bonds" means the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993, dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000.

"Prior Ordinance" means, collectively, the ordinance of the Issuer enacted on October 12, 1993, as supplemented by the supplemental resolution of the Issuer adopted November 3, 1993, authorizing the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit

and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of gravity and pressure sanitary sewerage lines, grinder pumps, manholes and other sewerage facilities to service the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, Miller Road and other areas, together with all appurtenant facilities.

"Qualified Investments" means and includes the following:

1. (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government sponsored agencies which are not backed by the full faith and credit of the United States of America:

-Federal Home Loan Mortgage Corporation (FHLMC)

Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

Senior Debt obligations

-Farm Credit Banks (formerly, Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)

Consolidated system-wide bonds and notes

- Federal Home Loan Banks (FHL Banks)  
Consolidated debt obligations
- Federal National Mortgage Association (FNMA)  
Senior debt obligations  
Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
- Student Loan Marketing Association (SLMA)  
Senior debt obligations (excluded are securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date)
- Financing Corporation (FICO)  
Debt obligations
- Resolution Funding Corporation (REFCORP)  
Debt obligations

4. Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 30 days) of any bank the short-term obligations of which are rated 'A-1' or better by S&P.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$5 million.

6. Commercial paper (having original maturities of not more than 270 days) rated 'A-1+' by S&P and 'Prime-1' by Moody's.

7. Money market funds rated 'AAm' or 'AAm-G' by S&P, or better.

8. "State Obligations," which means:

A. Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated 'A3' by Moody's and 'A' by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

B. Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated 'A-1+' by S&P and 'Prime-1' by Moody's.

C. Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (A) above and rated 'AA' or better by S&P and 'Aa' or better by Moody's.

9. Pre-refunded municipal obligations rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service meeting the following requirements:

A. the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

B. the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

C. the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

D. the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

E. no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification; and

F. the cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements:

A. With any domestic bank the long term debt of which is rated 'AA' or better by S&P (so long as an opinion is rendered that the repurchase agreement is a "repurchase agreement" and a "qualified

financial contract" as defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and that such bank is subject to FIRREA), or any foreign bank the long term debt of which is rated at least 'AA' by S&P and 'AAA' by S&P and at least 'Aa' by Moody's; provided the term of such repurchase agreement is for one year or less.

B. With (1) any broker-dealer with "retail customers" which has, or the parent company of which has, long-term debt rated at least 'AA' by S&P and 'Aa' by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation (SIPC); or (2) any other entity approved by Financial Security, provided that:

a. The market value of the collateral is maintained (i) for United States Treasury Securities at the levels shown below under "Collateral Levels for United States Treasury Obligations" and (ii) for other collateral, at levels acceptable to Financial Security;

b. Failure to maintain the requisite collateral percentage will require the Issuer to liquidate the collateral.

c. The Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") has possession of the collateral or the collateral has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

d. The repurchase agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

e. The transferor represents that the collateral is free and clear of any third-party liens or claims;

f. An opinion is rendered that the repurchase agreement is a "repurchase agreement" as defined in the United States Bankruptcy Code and, if the provider is a bank, that

such bank is subject to FIRREA and the repurchase agreement is a "qualified financial contract" as defined in FIRREA;

g. There is or will be a written agreement governing every repurchase transaction;

h. The Issuer represents that it has no knowledge of any fraud involved in the repurchase transaction; and

i. The Issuer receives the opinion of counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such repurchase agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms.

11. Investment agreements with (A) a domestic bank the long-term debt of which is rated at least 'AA' by S&P and 'Aa' by Moody's (so long as an opinion is rendered that the bank is subject to FIRREA); or (B) a foreign bank the long-term debt of which is rated 'AAA' by S&P and at least "Aa' by Moody's, or at least 'AA' by S&P and 'Aaa' by Moody's; provided, that, by the terms of the investment agreement:

(1) interest payments are to be made at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice (which notice may be amended or withdrawn at any time prior to the specified withdrawal date); provided that the Ordinance specifically requires the Issuer to give notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(3) the investment agreement shall state that is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof;

(4) a fixed guaranteed rate of interest is to be paid on invested funds and all future deposits, if any, required to be made

to restore the amount of such funds to the level specified under the Ordinance;

(5) the term of the investment agreement does not exceed seven years or such longer term as shall be approved by the Bond Insurer;

(6) the Issuer receives the opinion of domestic counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in form and substance acceptable;

(7) the investment agreement shall provide that if during its term

(a) the provider's rating by either S&P or Moody's falls below 'AA' or 'Aa,' respectively, or, with respect to a foreign bank, below the ratings of such provider at the delivery date of the investment agreement, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, either (i) collateralize the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") United States Treasury Obligations which are free and clear of any third-party liens or claims at the Collateral Levels set forth below; or (ii) repay the principal of and accrued but unpaid interest on the investment, and

(b) the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below 'A,' or, with respect to a foreign bank, below "AA" or "Aa" by S&P or Moody's, as appropriate, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Issuer; and

(8) The investment agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(9) the investment agreement must provide that if during its term

(a) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate, and

(b) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate.

(10) Any State-administered pool investment fund in which the Issuer is statutorily permitted or required to invest.

(11) Subject to the prior written approval of the Bond Insurer, such other obligations as shall be permitted to be legal investments of the Issuer by the laws of the State.

**COLLATERAL LEVELS FOR UNITED STATES TREASURY OBLIGATIONS**

	Remaining maturity				
	1 year <u>or less</u>	5 years <u>or less</u>	10 years <u>or less</u>	15 years <u>or less</u>	30 years <u>or less</u>
Frequency of valuation					
Daily	102	105	106	108	114
Weekly	103	111	112	114	120
Monthly	105	117	120	125	133
Quarterly	107	120	130	133	140

**VALUATION REQUIREMENTS:**

- (1) On each valuation date the Issuer, the Paying Agent, or the custodian who shall confirm to the Issuer and the Paying Agent, shall, at the cost of the provider, value the market value (exclusive of accrued interest) of the collateral, which market value will be an amount equal to the requisite collateral percentage times the principal amount of the investment and unpaid accrued interest thereon that is being secured;
- (2) In the event the collateral level is below its collateral percentage on a valuation date, such percentage shall be restored within the following restoration periods: one business day for daily valuations, two business days for weekly and monthly valuations, and one month for quarterly valuations. [The use of different restoration periods affect the requisite collateral percentage.];
- (3) The Issuer shall terminate the repurchase agreement or investment agreement, as appropriate, upon a failure to maintain the requisite collateral percentage after the restoration period and, if not paid by the counterparty in federal funds against transfer of the collateral, liquidate the collateral.

(f) The prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Reserve Account.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 1997 Bonds.

"Reserve Account Requirement" means, collectively, the respective amounts required to be on deposit in any reserve account for the Bonds.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinance and continued hereby.

"Series 1993 Bonds" or "Prior Bonds" means the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993, dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000.

"Series 1993 Bonds Redemption Account" means the Redemption Account established by the Prior Ordinance for the Series 1993 Bonds and continued hereby.

"Series 1993 Bonds Reserve Account" means the Reserve Account established by the Prior Ordinance for the Series 1993 Bonds and continued hereby.

"Series 1993 Bonds Sinking Fund" means the Sinking Fund established by the Prior Ordinance for the Series 1993 Bonds and continued hereby.

"Series 1997 Bonds" means the not more than \$4,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"Series 1997 Bonds Reserve Account" means the Series 1997 Bonds Reserve Account established in the Series 1997 Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1997 Bonds Reserve Account Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1997 Bonds in the then current or any succeeding year.

"Series 1997 Bonds Sinking Fund" means the Series 1997 Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking fund established for the Prior Bonds and the Series 1997 Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 1997 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1997 Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation or the Prior Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, consisting of a sewage treatment plant, collection and transportation lines, lift stations, pumps and all appurtenant facilities, now owned by the Issuer or any integral part thereof, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a municipal sewage treatment and collection system, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for said sewage treatment and collection system from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$4,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the SRF Program. The cost of the Project is estimated not to exceed \$4,000,000, all of which will be obtained from proceeds of the Series 1997 Bonds.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 1997 Bonds, funding a reserve account for the Series 1997 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1997 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be issued the negotiable Series 1997 Bonds of the Issuer, in an aggregate principal amount of not more than \$4,000,000. The Series 1997 Bonds shall be issued as a single bond, designated "Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program)", and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1997 Bonds remaining after funding of the Series 1997 Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 1997 Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 1997 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1997 Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1997 Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1997 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1997 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from the date so specified therein.

Section 3.03.      Execution of Bonds. The Series 1997 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 1997 Bonds shall cease to be such officer of the Issuer before the Series 1997 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 1997 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04.      Authentication and Registration. No Series 1997 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 1997 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05.      Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 1997 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 1997 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 1997 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 1997 Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 1997 Bonds or transferring the registered Series 1997 Bonds are exercised, all Series 1997 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 1997 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 1997 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 1997 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 1997 Bonds or, in the case of any proposed redemption of Series 1997 Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 1997 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1997 Bonds Reserve Account. No holder or holders of the Series 1997 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1997 Bonds or the interest thereon.

**Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds.** The payment of the debt service of all Series 1997 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 1997 Bonds and to make the payments into the respective Sinking Funds, the Reserve Accounts therein, and the Depreciation Fund, and all other payments hereinafter set forth, are hereby irrevocably pledged to the payment of the principal of and interest on the Prior Bonds and the Series 1997 Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

**Section 3.09. Delivery of Bonds.** The Issuer shall execute and deliver the Series 1997 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1997 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 1997 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1997 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 1997 Bonds.

**Section 3.10. Form of Bonds.** The text of the Series 1997 Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF HUNTINGTON  
SEWER REVENUE BOND,  
SERIES 1997  
(WEST VIRGINIA SRF PROGRAM)

No. R- \_\_\_\_\_

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF HUNTINGTON, a municipal corporation and political subdivision of the State of West Virginia in Cabell County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 199\_\_\_\_, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 199\_\_\_\_, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia

Division of Environmental Protection (the "DEP), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated \_\_\_\_\_, 199\_\_.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) [to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iii)] to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 199\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 199\_\_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

**THIS BOND IS ISSUED ON PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993, DATED NOVEMBER 1, 1993, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,100,000 (THE "PRIOR BONDS").**

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1997 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 1997 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of

operation, repair and maintenance of the System, and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds, so long as the Prior Bonds are outstanding, and thereafter, 115% of such amount; provided however, that, if the Prior Bonds are no longer outstanding and so long as there exists in the Series 1997 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the reserve accounts established for any other obligations outstanding prior to or on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the Costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF HUNTINGTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated \_\_\_\_\_, 199\_\_.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 1997 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 199\_\_.

**ONE VALLEY BANK, NATIONAL  
ASSOCIATION, as Registrar**

\_\_\_\_\_  
Authorized Officer

(Form of)

**EXHIBIT A**

**RECORD OF ADVANCES**

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	
TOTAL		\$	<u>                    </u>

**EXHIBIT B**

**SCHEDULE OF ANNUAL DEBT SERVICE**



Section 3.11.      Sale of Bonds: Approval and Ratification of Execution of Loan Agreement. The Series 1997 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12.      "Amended Schedule A" Filing. Within 60 days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor.

**ARTICLE IV**

**[RESERVED]**

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01.      Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinance);
  - (2) Depreciation Fund (established by the Prior Ordinance);
- and
- (3) Bond Construction Trust Fund.

Section 5.02.      Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 1993 Bonds Sinking Fund (established by the Prior Ordinance);
  - (a) Within the Series 1993 Bonds Sinking Fund:
    - (i) Series 1993 Bonds Reserve Account (established by the Prior Ordinance); and
    - (ii) Series 1993 Bonds Redemption Account (established by the Prior Ordinance);
- (2) Series 1997 Bonds Sinking Fund;
  - (a) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account.

Section 5.03.      System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and in this Bond Legislation and shall

be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinance and in this Bond Legislation. All moneys in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and, simultaneously, (i) remit to the Commission the amounts required by the Prior Ordinance to be deposited in the Series 1993 Bonds Sinking Fund for payment of the principal of and interest on the Series 1993 Bonds, (ii) commencing 4 months prior to the first date of payment of interest on the Series 1997 Bonds for which interest has not been capitalized or as required in the Loan Agreement, remit to the Commission for deposit in the Series 1997 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 1997 Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1997 Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (iii) commencing 4 months prior to the first date of payment of principal of the Series 1997 Bonds, remit to the Commission for deposit in the Series 1997 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 1997 Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1997 Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and, simultaneously, (i) remit to the Commission the amount required by the Prior Ordinance to be deposited in the Series 1993 Bonds Reserve Account, and (ii) commencing 3 months prior to the first date of payment of principal of the Series 1997 Bonds, if not fully funded upon issuance of the Series 1997 Bonds, remit to the Commission for deposit in the Series 1997 Bonds Reserve

Account, an amount equal to 1/120 of the Series 1997 Bonds Reserve Account Requirement; provided, that no further payments shall be made into the Series 1997 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1997 Bonds Reserve Account Requirement.

(4) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the first month in which interest shall be payable from the Revenue Fund and as previously set forth in the Prior Ordinance and not in addition thereto, transfer from the Revenue Fund to the Depreciation Fund, an amount equal to not less than 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Reserve Accounts.

Withdrawals and disbursements may be made by the Issuer from the Depreciation Fund only for the following purposes and in the following order of priority:

(a) To make up any deficiency in the Reserve Accounts (so that the amount on deposit therein is at least equal to the Reserve Account Requirement), or to reimburse in whole or in part any issuer of a reserve account letter of credit in the event of a draw thereon;

(b) For the payment of the principal (including the principal amount to be paid under the mandatory redemption schedules) of or interest on the Bonds, but only in the event that at the time of such withdrawal there are not sufficient funds for such purpose in the Sinking Funds (excluding the Reserve Accounts);

(c) For the payment of the reasonable costs of land and depreciable renewals, repairs, extensions, improvements and additions to the System;

(d) Upon resolution of the Board and the Issuer, moneys in the Depreciation Fund in excess of \$1,000,000 may be used for optional redemption or for purchase of Bonds. In the event of purchase of Bonds, the Issuer may direct the purchase of Bonds offered for sale at the lowest price below the redemption price of such Bonds.

(5) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining Net Revenues to payment of debt service on subordinate bonds, notes, certificates or obligations of the System. Any excess of moneys then remaining in the Revenue Fund may be used for any lawful purpose of the System.

(6) If on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

Moneys in the Series 1997 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1997 Bonds as the same shall become due. Moneys in the Series 1997 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1997 Bonds as the same shall come due, when other moneys in the Series 1997 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1997 Bonds and then to the next ensuing principal payment due thereon.

The Issuer shall restore any withdrawals from the Reserve Accounts which have the effect of reducing the assets therein below the Reserve Account Requirement, first, from the Depreciation Fund, and then from the first Net Revenues available after all other required payments to the Sinking Funds, including any deficiencies for prior payments have been made in full; provided, that the Issuer shall not be required to restore such deficiency when the aggregate amount of funds in the Sinking Funds, including the Reserve Accounts therein, are at least equal to the aggregate amount of Bonds issued pursuant to the Prior Ordinance and this Bond Legislation then Outstanding, plus the amount of interest due or thereafter to become due on said Bonds then Outstanding.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the

maximum provided and required to be paid into the concomitant sinking fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such sinking fund.

The Issuer shall not be required to make any further payments into the Series 1997 Bonds Sinking Fund, or into the Series 1997 Bonds Reserve Account therein when the aggregate amount of funds in said Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal and interest payments, and any payments made for the purpose of funding a deficiency in any Reserve Account, shall be made on a parity and pro rata, with respect to the Prior Bonds and Series 1997 Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1997 Bonds Sinking Fund created hereunder, and all amounts required for the Series 1997 Bonds Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required hereunder.

Moneys in the Series 1997 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1997 Bonds Sinking Fund, including the Series 1997 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1997 Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 1997 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the Loan Agreement.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this Section, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Depreciation Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01.      Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Series 1997 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1997 Bonds, there shall first be deposited with the Commission in the Series 1997 Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1997 Bonds for the period commencing on the date of issuance of the Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1997 Bonds, there shall be deposited with the Commission in the Series 1997 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 1997 Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 1997 Bonds, such moneys shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 1997 Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 1997 Bonds shall be used to fund the Series 1997 Bonds Reserve Account, if not funded upon issuance of the Series 1997 Bonds, in an amount not to exceed the Series 1997 Bonds Reserve Requirement; provided that, in no event shall more than 10% of the proceeds of the Series 1997 Bonds be deposited in the Series 1997 Bonds Reserve Account.

Section 6.02.      Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 1997 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01.      General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1997 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 1997 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 1997 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02.      Bonds not to be Indebtedness of the Issuer. The Series 1997 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 1997 Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1997 Bonds or the interest thereon.

Section 7.03.      Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 1997 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1997 Bonds and to make the payments into the respective Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Prior Bonds and the Series 1997 Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04.      Rates. Prior to the issuance of the Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the City Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for

contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than the sum of (i) 120% of the Maximum Annual Debt Service on the Bonds in any Fiscal Year, so long as the Prior Bonds are Outstanding, and thereafter 115% of such amount; provided that, in the event the Prior Bonds are no longer outstanding and an amount equal to or in excess of the Series 1997 Bonds Reserve Account Requirement is on deposit in the Series 1997 Bonds Reserve Account and any reserve accounts for obligations prior to or on a parity with the Series 1997 Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the Maximum Annual Debt Service on the Bonds in any Fiscal Year; and (ii) the amount, if any, required to be deposited in the Reserve Accounts in order to satisfy the Reserve Account Requirement within a period of not more than 12 months, assuming equal payments are made each month. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, loan, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority.

So long as the Series 1997 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Board shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Board may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Board shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Council may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Depreciation Fund. Such payments of such proceeds into the Depreciation Fund shall reduce the amounts required to be paid into said fund by other provisions of the Prior Ordinance and this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Article X, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

**Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances.** Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation and the Prior Ordinance at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in the Prior Ordinance and in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

**Section 7.07. Additional Parity Bonds.** So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no additional parity Bonds, as in this section defined, payable out of the revenues of the System, shall be issued after the issuance of the Series 1997 Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the acquisition and construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the increased annual Net Revenues expected to be received after the date of issuance of such parity Bonds shall, so long as any of the Prior Bonds are outstanding, not be less than 120% of the Maximum Annual Debt Service, and thereafter, shall not be less than 115% of the Maximum Annual Debt Service, on the following:

- (1) The Prior Bonds and the Series 1997 Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinance and this Bond Legislation then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "increased annual Net Revenues expected to be received" as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such additional parity Bonds, and the increased Net Revenues to be available as a result of existing additional customers required by law to be served by the System upon completion of the facilities to be financed with the proceeds of any such additional parity Bonds, and shall not exceed the amount to be stated in the aforementioned certificate of Independent Accountants, which shall be filed in the office of the City Clerk of the Issuer prior to the issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Prior Bonds and the Series 1997 Bonds, and all the covenants and other provisions of the Prior Ordinance and this Bond Legislation (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Prior Bonds and the Series 1997 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in the Prior Ordinance and this Bond Legislation required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to the Prior Ordinance and this Bond Legislation.

No additional parity Bonds shall be valid unless authenticated in accordance with the Prior Ordinance and this Bond Legislation. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by the Prior Ordinance and this Bond Legislation, modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the revenues of the System of which is subject to the prior and superior lien of the Bonds on such revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made in accordance with the Prior Ordinance and this Bond Legislation have first been paid. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for

payment from such revenues, with the Bonds except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in the Prior Ordinance and this Bond Legislation on account of the Bonds then Outstanding (excluding the Depreciation Fund), and any other payments provided for in the Prior Ordinance and this Bond Legislation, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The Issuer may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

**Section 7.08. Books; Records and Facilities.** The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be

maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Issuer shall direct.

The Issuer shall file with the Consulting Engineers, the Authority and the DEP, or any other original purchaser of the Series 1997 Bonds, and shall mail in each year to any Holder or Holders of the Series 1997 Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Accountants in compliance with OMB Circular 128 and the Single Audit Act and shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of the Series 1997 Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's operation and maintenance expenses and debt service requirements.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the

powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.10. Operating Budget; Audit and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and

construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

**Section 7.12. No Competing Franchise.** To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

**Section 7.13. Enforcement of Collections.** The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

**Section 7.14. No Free Services.** The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

**Section 7.15. Insurance and Construction Bonds.** A. The Issuer hereby covenants and agrees that so long as the Series 1997 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

- (1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the event of any damage to or destruction of any portion of the System, the

Board will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Board will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Board and the Issuer during construction of the Project in the full insurable value thereof.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than is customarily carried by municipalities of equivalent size with respect to works and properties similar to the System to protect the Issuer and the Board from claims for bodily injury and/or death and from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer and the Board from claims arising out of operation or ownership of motor vehicles of or for the System, provided that, the Board, with the review of an insurance consultant and the concurrence of the Issuer, may elect to self-insure. If the Issuer determines in good faith that any required insurance is not commercially available at a reasonable cost with reasonable terms, it shall engage an insurance consultant to verify the determination and to make recommendations regarding the types, amounts and provisions of any such insurance that should be purchased or funded by the Issuer, taking into consideration the costs and practices of other municipal water and sewer systems of similar size and type in the State to the extent that such information is available. The Issuer may, upon resolution adopted in good faith and upon the recommendations of the insurance consultant, adopt alternate or supplemental risk management programs which the Issuer determines to be reasonable, including the right to self-insure and participate in captive insurance companies.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Board and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board having custody of the revenues or of any

other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the sewerage facilities portion of the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the sewerage facilities portion of the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the sewerage facilities portion of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the sewerage facilities portion of the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17.      Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18.      Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19.      Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A.    **PRIVATE BUSINESS USE LIMITATION.** The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1997 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1997 Bonds during the term thereof is, under the terms of the Series 1997 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1997 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1997 Bonds during the term thereof is, under the terms of the Series 1997 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for

said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1997 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1997 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

**B. PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1997 Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

**C. FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1997 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**D. INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1997 Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

**E. FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 1997 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01.        Investments. The Issuer shall invest and reinvest, and shall instruct the Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Reserve Accounts shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Commission to semiannually transfer from the Reserve Accounts to the Sinking Funds any earnings on the moneys deposited therein and any other funds in excess of the Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in the Reserve Accounts an amount at least equal to the Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Reserve Accounts, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Reserve Accounts shall, at any

time, be less than the applicable Reserve Account Requirement, the applicable Bond Insurer or Bondholder shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Net Revenues after required deposits to the Sinking Funds and otherwise in accordance with the Prior Ordinance and this Bond Legislation.

(D) All amounts representing accrued and capitalized interest shall be held by the Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Sinking Funds may be invested by the Commission in the West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 1997 Bonds which would cause the Series 1997 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 1997 Bonds) so that the interest on the Series 1997 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States. In accordance with Section 148 (f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Series 1997 Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 1997 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private

activity bonds) issued by the Issuer during the calendar year in which the Series 1997 Bonds are issued does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect an applicable to the Series 1997 Bonds. For purposes of the first paragraph of Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1997 Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1997 Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay from any lawful sources available therefor, to the United States such amount, plus a penalty equal to 50% of the rebate amount not paid, plus interest on that amount, unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issue exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 1997 Bonds subject to rebate. The Issuer shall

also furnish the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01.      Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any Bonds; or
- (2) If default occurs in the Issuer's or the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Bonds set forth in this Bond Legislation, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer or Issuer, as appropriate shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer or Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02.      Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 1997 Bonds shall be on a parity with the Prior Bonds.

Section 9.03.      Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the

Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and

making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### DEFEASANCE

**Section 10.01. Defeasance of Bonds.** If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Series 1997 Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1997 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 1997 Bonds from gross income for federal income tax purposes.

Series 1997 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1997 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1997 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1997 Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1997 Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 1997 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 1997 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 1997 Bonds shall be made without the consent in writing of the Registered Owners of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 1997 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 1997 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed: Prior Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall

control (unless less restrictive), so long as the Prior Bonds or any portion thereof are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Herald-Dispatch, a newspaper published and of general circulation in The City of Huntington, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: November 13, 1995

Passed on Second Reading: November 27, 1995

Passed on Final Reading  
Following Public  
Hearing: December 11, 1995



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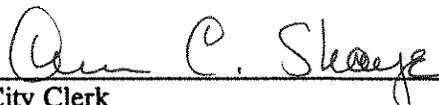
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF HUNTINGTON on the 11th day of December, 1995.

Dated: November 25, 1997.

[SEAL]

  
\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**Loan Agreement included in bond transcript as Document No. 3**

**10/24/97  
435500/94001**



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1997 (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF HUNTINGTON; RATIFYING AND APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the city council (the "Governing Body") of The City of Huntington (the "Issuer"), has duly and officially adopted and enacted a bond ordinance, effective December 11, 1995 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF

SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING  
THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 1995 (West Virginia SRF Program), of the Issuer, in the aggregate principal amount not to exceed \$4,000,000;

WHEREAS, the Sewer Revenue Bonds, Series 1995 (West Virginia SRF Program), were not issued in 1995, but will be issued in 1997;

WHEREAS, the Governing Body desires to redesignate the Bonds as "Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program)" (the "Bonds" or the "Series 1997 Bonds");

WHEREAS, the Bond Ordinance has authorized the execution and delivery of a loan agreement relating to the Bonds (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection (the "DEP"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bonds be redesignated, that the Loan Agreement be ratified and approved by the Issuer, that the exact principal amount, the date, the maturity date, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HUNTINGTON:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted, the Sewer Revenue Bonds, Series 1995 (West Virginia SRF Program), are hereby redesignated as "Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program)," and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered R-1, in the principal amount of \$3,039,895. The Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2019, and shall bear interest at the rate of 2% per annum. The principal of and the interest on the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1998, and ending March 1, 2019, and in the amounts as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby approve and shall pay the administrative fee equal to 1% of the principal amount of the Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 4. The Issuer does hereby ratify, approve and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 6. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 7. The Issuer does hereby appoint and designate Bank One, West Virginia, National Association, Huntington, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 1997 Bonds proceeds in the amount of \$-0- shall be deposited in the Series 1997 Bonds Sinking Fund, as capitalized interest.

Section 9. Series 1997 Bonds proceeds in the amount of \$177,634 shall be deposited in the Series 1997 Bonds Reserve Account.

Section 10. The balance of the proceeds of the Bonds shall be deposited in or credited to the Bond Construction Trust Fund as received from time to time for payment of the costs of the Project, including costs of issuance of the Bonds and related costs.

Section 11. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about November 25, 1997, to the Authority pursuant to the Loan Agreement.

Section 12. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer does hereby ratify, approve and accept all contracts relating to the financing, acquisition and construction of the Project, including without limitation, Contract 1 with McCoy Construction Company and Contract 2 with B. & L. Utility Contractors, Inc.

Section 14. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in

repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Moneys in the Series 1997 Bonds Sinking Fund, including the Series 1997 Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 15. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 16. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than \$5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1997, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Section 17. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 10th day of November, 1997.

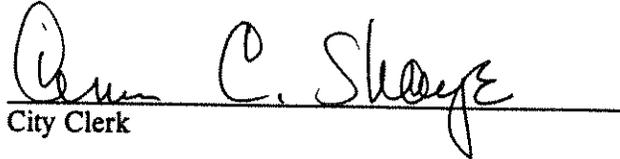
  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Huntington on the 10th day of November, 1997.

Dated: November 25, 1997.

[SEAL]

  
City Clerk

11/03/97  
435500/94001



LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Bureau of Environment (the "DEP"), and the local government designated below (the "Local Government").

CITY OF HUNTINGTON (INWOOD)  
(Local Government)

WITNESSETH:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 20, Article 5I, of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of

wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to construct, operate and improve a wastewater treatment project and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

WHEREAS, the Local Government intends to construct, is constructing or has constructed such a wastewater treatment project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Loan Agreement.

1.6 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.7 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and of the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, at and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Government shall permit the Authority and DEP, acting by and through their Directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Government shall submit to the Authority and DEP such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract, as security for the faithful performance of such contract.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward the Form to DEP in compliance with the Local Government's construction schedule.

### ARTICLE III

#### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Local Government shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(c) The Local Government shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim financing of construction, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") necessary for the construction of the Project and operation of the System, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(g) The Local Government shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsection 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountants for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Local Government and the Local Government shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date set forth in Exhibit E hereto.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The

Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

#### ARTICLE IV

Local Bonds; Security for Loan;  
Repayment of Loan; Interest on Loan;  
Fees and Charges

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. The revenues generated from the operation of the System will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving

or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided that if the Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the net revenues from the System;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the reserve account established for the payment of debt service on the Local Bonds is funded (whether by Local Bond proceeds, monthly deposits or otherwise) the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Government will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may be sold, mortgaged, leased or otherwise disposed of as a whole or substantially as a whole provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the local bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and

on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the written consent of the Authority and DEP; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Government will not render any free services of the System;

(viii) That any Local Bond owner may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that the Local Government is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the West Virginia Municipal Bond Commission (the "Commission") its required interest, principal and reserve fund payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check to the Authority by the 5th day of such calendar month;

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project; and

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will

not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include without limitation Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

## ARTICLE V

### Certain Covenants of the Local Government; Imposition and Collection of User Charges; Payments To Be Made by Local Government to the Authority

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System.

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by local governments in the terms and covenants of loan agreements, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have

recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the SRF Regulations or this Loan Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Loan.

6.4 The Local Government hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Local Government fails to make any such rebates as required, then the Local Government shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.5 Notwithstanding Section 6.4, the Authority and DEP may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Government to be monitored or cause the rebate calculations for the Local Government to be prepared, in either case at the expense of the Local Government.

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The Local Government hereby agrees to file with the Authority upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Schedule Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.4 No waiver by any party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.5 This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.6 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Local Government specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.7 This Loan Agreement shall terminate upon the earlier of:

- (i) written notice of termination to the Local Government from either the Authority or DEP;
- (ii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this Loan Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the amount of the Loan made by the Authority and DEP as set forth in (iii) above is not terminated due to such non-funding on any balance on the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default under the Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

City of Huntington  
[Proper Name of Local Government]

(SEAL)

By: *John Brown*  
Its: Mayor

Attest:

Date: 10.21.97

*Ann C. Shoup*  
Its City Clerk

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: *Barbara Taylor*  
Its: Chief, Office of Water Resources

Date: 10/22/97

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: *Daniel B. Zimberly*  
Its: Director

Attest:

Date: October 17, 1997

*Barbara B Meadows*  
Secretary-Treasurer

APPROVED AS TO FORM PRIOR TO  
ACKNOWLEDGEMENT THEREOF, THIS  
25<sup>th</sup> day of September 97  
DARRELL V. MCGRAW, JR.

-18-

ATTORNEY GENERAL  
By: *Lawrence Wayfield*  
DEPUTY ATTORNEY GENERAL

**EXHIBIT A**

**[Form of Performance Certificate]**

**[TO BE PROVIDED BY DEP]**

EXHIBIT B

[Form of Monthly Financial Report]  
[Name of Local Government]  
[Name of Bond Issue]  
Fiscal Year - \_\_  
Report Month: \_\_\_\_\_

<u>ITEM</u>	<u>CURRENT MONTH</u>	<u>YEAR TO DATE</u>	<u>BUDGET YEAR TO DATE</u>	<u>BUDGET DIFFERENCE</u>
1. Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. SRF Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

Witnesseth my signature this \_\_ day of \_\_\_\_, \_\_\_\_.

[Name of Local Government]

By: \_\_\_\_\_  
Authorized Officer

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, \_\_\_\_\_, hereby certify that my firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (herein called the "Project") of \_\_\_\_\_ (the "Issuer") to be constructed primarily in \_\_\_\_\_ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the \_\_\_\_\_ passed by the \_\_\_\_\_ of the Issuer on \_\_\_\_\_, 19\_\_\_\_, effective \_\_\_\_\_, 19\_\_\_\_, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated \_\_\_\_\_, 19\_\_\_\_.

1. The Bonds are being issued for the purpose of \_\_\_\_\_  
\_\_\_\_\_  
(the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the \_\_\_\_\_ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and

acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

By \_\_\_\_\_

West Virginia License No. \_\_\_\_

[SEAL]

## EXHIBIT E

### SPECIAL CONDITIONS

A. The recipient agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. **AUDIT REQUIREMENT** (Supplement to Article IV 4.1 (b) (xi)) - The loan recipient that receives \$25,000 or more in a fiscal year must obtain audits in accordance with the Single Audit Act of 1984 and OMB Circular 128. Financial statement audits are required once all funds have been received by the loan recipient.

EXHIBIT F

[Monthly Payment Form]

West Virginia Water Development  
Authority  
1201 Dunbar Avenue  
Dunbar, WV 25064

Re: [Name of bond issue]

Dear Sirs:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Local Government] on \_\_\_\_\_, --.

Sinking Fund:

Interest \$\_\_\_\_\_

Principal \$\_\_\_\_\_

Total: \$\_\_\_\_\_

Reserve Fund: \$\_\_\_\_\_

Witness my signature this \_\_\_\_ day of \_\_\_\_\_.

[Name of Local Government]

By: \_\_\_\_\_  
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
1201 Dunbar Avenue  
Dunbar, West Virginia 25064

Gentlemen:

We are bond counsel to \_\_\_\_\_ (the "Local Government"), a  
\_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated \_\_\_\_\_, 19\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated \_\_\_\_\_, 19\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$\_\_\_\_\_, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable \_\_\_\_\_ 1, \_\_\_\_\_ 1, \_\_\_\_\_ 1, and \_\_\_\_\_ 1 of each year, beginning \_\_\_\_\_ 1, 19\_\_, at the respective rate or rates and with principal payable in installments on \_\_\_\_\_ 1 in each of the years, all as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
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The Local Bonds are issued for the purpose of \_\_\_\_\_ and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond \_\_\_\_\_ duly enacted by the Local Government on \_\_\_\_\_ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Local Government without the consent of the Authority.

3. The Local Government is a duly organized and presently existing \_\_\_\_\_, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary \_\_\_\_\_ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF BONDS

Principal Amount of Bonds	\$ 3,039,895
Purchase Price of Bonds	\$ 3,039,895

Interest on the Bonds shall be zero percent from the date of delivery to and including February 28, 1998. Principal and interest on the Bonds is payable quarterly, commencing June 1, 1998, at a rate of 2 % per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has [other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds] or [provide list of outstanding debt]. (See attached schedule) \*

The Local Government shall submit its payments monthly to the West Virginia Municipal Bond Commission with instructions that the West Virginia Municipal Bond Commission will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the Bond Commission in writing by the Authority. If the Reserve Fund is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Bond Commission. The Local Government shall instruct the Bond Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and interest and such Bonds shall grant the Authority a first lien on the net revenues of the Local Government's system.

The Local Government may prepay the Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Bonds which request must be filed at least 60 days prior to the intended date of issuance.

\*City of Huntington - Sewerage System Refunding Revenue Bonds, Series 1993, dated November 1, 1993, in the original principal amount of \$7,100,000.

SCHEDULE Y

City of Huntington, West Virginia  
 \$3,039,895.00 Loan -- 2% Interest, 1% Admin. Fee  
 20 Years

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
3/01/1998	.	.	.	.
6/01/1998	29,209.00	2.000%	15,199.48	44,408.48
9/01/1998	29,355.04	2.000%	15,053.43	44,408.47
12/01/1998	29,501.82	2.000%	14,906.65	44,408.47
3/01/1999	29,649.33	2.000%	14,759.15	44,408.48
6/01/1999	29,797.57	2.000%	14,610.90	44,408.47
9/01/1999	29,946.56	2.000%	14,461.91	44,408.47
12/01/1999	30,096.29	2.000%	14,312.18	44,408.47
3/01/2000	30,246.77	2.000%	14,161.70	44,408.47
6/01/2000	30,398.01	2.000%	14,010.46	44,408.47
9/01/2000	30,550.00	2.000%	13,858.47	44,408.47
12/01/2000	30,702.75	2.000%	13,705.72	44,408.47
3/01/2001	30,856.26	2.000%	13,552.21	44,408.47
6/01/2001	31,010.54	2.000%	13,397.93	44,408.47
9/01/2001	31,165.60	2.000%	13,242.88	44,408.48
12/01/2001	31,321.42	2.000%	13,087.05	44,408.47
3/01/2002	31,478.03	2.000%	12,930.44	44,408.47
6/01/2002	31,635.42	2.000%	12,773.05	44,408.47
9/01/2002	31,793.60	2.000%	12,614.87	44,408.47
12/01/2002	31,952.57	2.000%	12,455.90	44,408.47
3/01/2003	32,112.33	2.000%	12,296.14	44,408.47
6/01/2003	32,272.89	2.000%	12,135.58	44,408.47
9/01/2003	32,434.26	2.000%	11,974.22	44,408.48
12/01/2003	32,596.43	2.000%	11,812.04	44,408.47
3/01/2004	32,759.41	2.000%	11,649.06	44,408.47
6/01/2004	32,923.21	2.000%	11,485.27	44,408.48
9/01/2004	33,087.82	2.000%	11,320.65	44,408.47
12/01/2004	33,253.26	2.000%	11,155.21	44,408.47
3/01/2005	33,419.53	2.000%	10,988.94	44,408.47
6/01/2005	33,586.63	2.000%	10,821.85	44,408.48
9/01/2005	33,754.56	2.000%	10,653.91	44,408.47
12/01/2005	33,923.33	2.000%	10,485.14	44,408.47
3/01/2006	34,092.95	2.000%	10,315.52	44,408.47
6/01/2006	34,263.41	2.000%	10,145.06	44,408.47
9/01/2006	34,434.73	2.000%	9,973.74	44,408.47
12/01/2006	34,606.90	2.000%	9,801.57	44,408.47
3/01/2007	34,779.94	2.000%	9,628.53	44,408.47
6/01/2007	34,953.84	2.000%	9,454.63	44,408.47
9/01/2007	35,128.61	2.000%	9,279.86	44,408.47
12/01/2007	35,304.25	2.000%	9,104.22	44,408.47
3/01/2008	35,480.77	2.000%	8,927.70	44,408.47
6/01/2008	35,658.17	2.000%	8,750.30	44,408.47
9/01/2008	35,836.47	2.000%	8,572.01	44,408.48
12/01/2008	36,015.65	2.000%	8,392.82	44,408.47
3/01/2009	36,195.73	2.000%	8,212.75	44,408.48

City of Huntington, West Virginia  
 \$3,039,895.00 Loan -- 2% Interest, 1% Admin. Fee  
 20 Years

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
6/01/2009	36,376.71	2.000%	8,031.77	44,408.48
9/01/2009	36,558.59	2.000%	7,849.88	44,408.47
12/01/2009	36,741.38	2.000%	7,667.09	44,408.47
3/01/2010	36,925.09	2.000%	7,483.38	44,408.47
6/01/2010	37,109.71	2.000%	7,298.76	44,408.47
9/01/2010	37,295.26	2.000%	7,113.21	44,408.47
12/01/2010	37,481.74	2.000%	6,926.73	44,408.47
3/01/2011	37,669.15	2.000%	6,739.32	44,408.47
6/01/2011	37,857.49	2.000%	6,550.98	44,408.47
9/01/2011	38,046.78	2.000%	6,361.69	44,408.47
12/01/2011	38,237.01	2.000%	6,171.46	44,408.47
3/01/2012	38,428.20	2.000%	5,980.27	44,408.47
6/01/2012	38,620.34	2.000%	5,788.13	44,408.47
9/01/2012	38,813.44	2.000%	5,595.03	44,408.47
12/01/2012	39,007.51	2.000%	5,400.96	44,408.47
3/01/2013	39,202.55	2.000%	5,205.92	44,408.47
6/01/2013	39,398.56	2.000%	5,009.91	44,408.47
9/01/2013	39,595.55	2.000%	4,812.92	44,408.47
12/01/2013	39,793.53	2.000%	4,614.94	44,408.47
3/01/2014	39,992.50	2.000%	4,415.97	44,408.47
6/01/2014	40,192.46	2.000%	4,216.01	44,408.47
9/01/2014	40,393.42	2.000%	4,015.05	44,408.47
12/01/2014	40,595.39	2.000%	3,813.08	44,408.47
3/01/2015	40,798.37	2.000%	3,610.10	44,408.47
6/01/2015	41,002.36	2.000%	3,406.11	44,408.47
9/01/2015	41,207.37	2.000%	3,201.10	44,408.47
12/01/2015	41,413.41	2.000%	2,995.06	44,408.47
3/01/2016	41,620.47	2.000%	2,788.00	44,408.47
6/01/2016	41,828.58	2.000%	2,579.90	44,408.48
9/01/2016	42,037.72	2.000%	2,370.75	44,408.47
12/01/2016	42,247.91	2.000%	2,160.56	44,408.47
3/01/2017	42,459.15	2.000%	1,949.32	44,408.47
6/01/2017	42,671.44	2.000%	1,737.03	44,408.47
9/01/2017	42,884.80	2.000%	1,523.67	44,408.47
12/01/2017	43,099.22	2.000%	1,309.25	44,408.47
3/01/2018	43,314.72	2.000%	1,093.75	44,408.47
6/01/2018	43,531.29	2.000%	877.18	44,408.47
9/01/2018	43,748.95	2.000%	659.52	44,408.47
12/01/2018	43,967.70	2.000%	440.78	44,408.48
3/01/2019	44,187.52	2.000%	220.94	44,408.46
<b>TOTAL</b>	<b>3,039,895.00</b>	<b>-</b>	<b>690,416.58</b>	<b>3,730,311.58 *</b>

\*Plus \$4,315 one-percent administrative fee paid quarterly.  
 Total fee paid over the life of the loan is \$345,200.00.



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 24th day of May, 1996.

CASE NO. 93-1013-S-CN  
THE HUNTINGTON SANITARY BOARD  
Petition to re-open sewer certificate application and for approval of increased project costs and financing.

COMMISSION ORDER

Background

This case involves the certification of a project to construct a sanitary sewer line extension in the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, and Miller Road areas in and around Huntington. By Order entered August 2, 1994, the commission granted the Huntington Sanitary Board (Board) a certificate of convenience and necessary to construct said sewer extension. By Recommended Decision which became the final order of the Commission on September 18, 1995, the Commission approved a modification of the project authorizing the Board to borrow up to \$2,271,000.00 from the State Revolving Fund (SRF).

Without Commission consent or approval, the Board revised the certificated project in several respects, including, but not limited to the deletion of areas outside the Huntington City limits. The board solicited bids based on such revised project. Pursuant to the deletion of areas outside of the City limits, complaint cases were filed by several citizens residing in the deleted areas. The filing of these complaints resulted in a cease and desist order prohibiting the Board from commencing construction until the complaints were resolved. See Letendre et. al. v. Huntington Sanitary Board, Case No. 95-0861-S-C. At a hearing held in the complaint case, a settlement was reached whereby the Board agreed to construct the project as originally certificated and the Complainants agreed to withdraw their complaints. On the basis of the settlement, the ALJ lifted the cease and desist order.

On March 1, 1996, the Board filed a Petition For Reopening the certificate case and stated (i) that after the hearing in the complaint case, the Board had determined that the total project cost to construct the project as certificated will be approximately \$3,600,000.00; (ii) that the Board had negotiated a change order with the low bidder on the revised project whereby the low bidder would construct the project as originally certificated for the amount of

\$2,707,416.00; (iii) that the Board had received a commitment from the Division of Environmental Protection for a loan from the SRF in the amount of \$3,600,000, payable over 20 years, at 3% annual interest, and (iv) that the additional borrowing from the SRF would not require the Board to increase its current rates. As relief, the Board requested that the Commission reopen the certificate case and enter an order permitting the Board to borrow up to \$3,600,000 from the SRF, and to allow the Board to commence construction.

On April 9, 1996, the Board filed a Motion for Expedited Treatment. In its Motion, the Board requested permission to begin construction on the upper portion of the project as originally certified by the Commission. Although the Board disagreed with the opinion of the Commission's Legal Staff that a change order with the low bidder on the revised project to construct the project as originally certificated did not comply with the bidding requirements of West Virginia Code § 5-22-1, the Board stated its intention to address those concerns by soliciting bids for the lower portion of the project and requested that it be permitted to separately bid the lower portion and proceed immediately with construction of the already bid portion.

In support of its Motion, the Board argued that rebidding the project as a whole would add to the cost of the project and delay the start of construction until next year. The Board further stated that the construction costs for the upper portion alone would be \$1,869,062.95, which is within the limits imposed for the project in the Recommended Decision that became a final order of the Commission on September 18, 1995, of \$2,271,000.00. Finally, the Board stated that it would come back to the Commission for approval if the bids received for construction of the lower portion of the project require borrowing in excess of \$3,600,000.00. As relief, the Board requested that the Commission allow the Board to proceed immediately with construction of the upper portion of the project.

On April 30, 1996, J. Joseph Watkins, Esquire of the Commission's legal staff filed a Final Joint Staff Memorandum recommending denial of the Board's petition to reopen the certificate case on grounds that the Board had yet to bid out the entire project as required by West Virginia Code § 5-22-1, and the Board could not yet know whether the cost relating to the entire project would exceed the limits set in the Recommended Decision which became a final order of the Commission on September 18, 1996. Mr. Watkins further recommended that the Commission deny the Board its requested relief in its Motion for Expedited Treatment on grounds that (i) construction should not proceed until all bids are in, (ii) construction of the upper portion of the project could have the affect of inflating the bids on the lower portion of the project, and because (iii) the delays thus far are attributable to the Board's own failure to bid out the project as originally certificated.

### DISCUSSION

The Commission initially notes that the Board violated a Commission order when it failed to seek the Commission's consent and approval prior to bidding a project that varied from the project certificated by the Commission. The Commission agrees with the Legal Staff's view that the Board's own conduct is at the root of the delays that have occurred to date.

The Commission agrees, however, that requiring the Board to re-bid the entire project would likely result in an increase in the costs associated with the portion of the project that has already been bid, and a total loss of the current construction season. Now that the Board has agreed to bid and construct the project as originally certificated, the reasonable course is to permit the Board to proceed with construction of the already bid upper portion of the project, modified to conform to the originally certificated project, and to immediately separately bid the lower portion of the project, also as originally certificated. Based on the Board's representations and supporting documentation, the Commission will authorize the Board to borrow up to \$3,600,000.00 from the SRF to finance the combined cost of the project. This authorization is premised on the representations of the Board, contained in paragraphs 18 and 19 of the Motion for Expedited Treatment, that the cost to construct the upper portion of the project will be \$1,869,062.95. Prior to proceeding with construction on the lower portion of the project, the Board will be required to seek approval of the Commission should the actual bids on the lower portion of the project cause the total project bids to exceed \$3,600,000.00, or should the scope or the financing of the project change for any reason.

### ORDER

IT IS, THEREFORE, ORDERED that Case No. 93-1013-S-CN is hereby reopened for the purpose of permitting The Huntington Sanitary Board to borrow up to \$3,600,000.00 from the State Revolving Fund to finance the total project costs of a sanitary sewer line extension in the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, and Miller Road areas of Huntington, all as originally certificated in the Commission's Order dated August 2, 1994.

IT IS FURTHER ORDERED that the relief requested by The Board in its Motion for Expedited Treatment is hereby granted and that the Board is permitted to immediately commence construction of the previously bid upper portion of the project, modified to conform to that portion of the project as originally certificated in the Commission's Order dated August 2, 1994.

IT IS FURTHER ORDERED that the Board shall immediately solicit competitive bids with respect to the remaining lower portion of the project as originally certificated in the Commission's Order dated

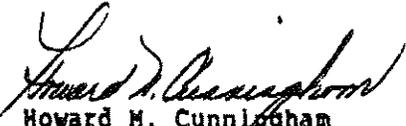
August 2, 1994, in compliance with West Virginia Code § 5-22-1.

IT IS FURTHER ORDERED that should the actual bids with respect to the lower portion of the project cause the total project costs to exceed the estimated \$3,600,000.00, or should the scope or the financing of the project change for any reason, The Huntington Sanitary Board shall first obtain Commission approval before proceeding with the construction of the lower portion of the project.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order on all parties of record by First Class United States Mail, and upon Commission Staff by hand delivery.

ARC.

A True Copy, Teste:

  
Howard M. Cunningham  
Executive Secretary

10/24/97 13:57

PSC OF WV → J ■ M10

NO.530 P002/012

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

**FINAL**9-18-95Entered: August 29, 1995

CASE NO. 93-1013-S-CN (Reopened)

THE HUNTINGTON SANITARY BOARD, a  
municipal corporation, Cabell County.

Application for a certificate of convenience  
and necessity to construct a sanitary sewer  
line extension in the Inwood Drive, Shockey  
Drive, McCoy Road, Ridgewood Road, and Miller  
Road areas, Huntington, Cabell County, and for  
approval of financial incidental thereto.

RECOMMENDED DECISION

On November 5, 1993, The Huntington Sanitary Board (Huntington), a municipal corporation, Huntington, Cabell County, filed an application with the Public Service Commission, pursuant to West Virginia Code §24-2-11, for a certificate of convenience and necessity to construct a sanitary sewer line extension to serve the area of Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road and Miller Road, in Huntington, Cabell County, and for approval of financing to provide such service.

On November 5, 1993, the Commission directed Huntington to publish the Notice of Filing. The Notice of Filing provided that, if no substantial protests were filed within thirty (30) days, the Commission may waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application. Pursuant thereto, on December 15, 1993, Huntington filed a publication affidavit indicating that the Notice of Filing had been published as directed on November 10, 1993, and on November 16, 1993, in The Herald Dispatch, a newspaper published and generally circulated in Cabell County, West Virginia. No protests were filed with the Commission.

On December 6, 1993, the Commission entered the Commission Referral Order in this proceeding, referring this matter to the Division of Administrative Law Judges for decision on or before June 3, 1994. Pursuant thereto, on December 10, 1993, the Administrative Law Judge (ALJ) issued a Procedural Order establishing a procedural schedule to process and resolve this matter, including a March 11, 1994 hearing date. This hearing date subsequently was continued to March 15, 1994.

On March 15, 1994, the ALJ held the hearing, and the parties presented evidence and legal arguments. Pursuant thereto, on May 18, 1994, the ALJ entered a Recommended Decision in this matter, granting the certificate application, but denying Huntington's proposal to finance the project by borrowing money, i.e., the ALJ required Huntington to finance the project

with cash on hand. After exceptions were filed, the Commission entered a Final Order on August 2, 1994, affirming the ALJ's May 18, 1994 Recommended Decision pertaining to the financing issue. However, the Commission left open the possibility that Huntington could later file a request to substantiate its proposal to finance the project with borrowed funds.

On April 8, 1995, Huntington filed a Petition to Reopen and Reconsideration of Commission's Order of August 2, 1994. Pursuant thereto, on May 15, 1995, the Commission entered another Commission Referral Order in this matter, reopening this certificate case and referring this matter to the Division of Administrative Law Judges for further hearing and for decision to be rendered on or before November 6, 1995. Pursuant thereto, on May 31, 1995, the ALJ issued a Procedural Order establishing a procedural schedule to process and resolve this matter, including an August 18, 1995 hearing date.

On July 28, 1995, Staff Attorney J. Joseph Watkins, Esquire, filed a letter in this proceeding, attaching thereto the Prepared Direct Testimony of Utilities Analyst Randy Lengyel, Water and Sewer Section, Utilities Division. Commission Staff recommended approving Huntington's proposed financing of the project. Commission Staff noted that Huntington has estimated that the project will cost \$2,271,200, and that Huntington can borrow up to \$3,500,000 from the West Virginia Pollution Control Revolving Fund (Fund). Commission Staff opined that, while Huntington has over \$6,500,000 cash on hand, it still would be reasonable for Huntington to borrow from the Fund because Huntington will not need a rate increase or a surcharge to cover debt service or to cover a reserve account required by the Fund; because such borrowing will enable Huntington to maintain sufficient funds to cover emergencies; and because the low 3% interest rate which is available from the Fund should prolong the need for future rate increases.

On August 2, 1995, Robert M. Levy, Esquire, counsel for Huntington, filed a letter accepting Commission Staff's recommendation and requesting that the ALJ cancel the August 18, 1995 hearing date. Pursuant thereto, on August 9, 1995, the ALJ issued a Procedural Order cancelling the procedural schedule established by the May 31, 1995 Procedural Order, including the August 18, 1995 hearing date.

#### DISCUSSION

The ALJ has considered all of the above, and since the parties have reconciled all of their differences in this matter, the ALJ will consider the parties to have waived their rights under Code §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding.

The ALJ holds that, since Commission Staff has recommended approving Huntington's proposed financing for the project, the same will be approved, including borrowing up to \$2,271,200 from the Fund.

### FINDINGS OF FACT

1. The Huntington Sanitary Board filed an application with the Commission, pursuant to Code §24-2-11, for a certificate of convenience and necessity to construct a sanitary sewer line extension to serve the area of Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road and Miller Road, in Huntington, Cabell County, and for approval of financing to provide such service. (See, Application, filed November 5, 1994).

2. The ALJ entered a Recommended Decision granting the certificate, but denying Huntington's proposal to finance the project by borrowing money, i.e., the ALJ required Huntington to finance the project by using cash on hand. (See, Recommended Decision, entered May 18, 1995).

3. Pursuant to exceptions filed by Huntington, the Commission affirmed the May 18, 1995 Recommended Decision, but it granted leave to Huntington to later try to substantiate its request to borrow money to finance the project. (See, Commission Order, entered August 2, 1994).

4. Pursuant to a request filed by Huntington, the Commission reopened Case No. 93-1013-S-CN to address the question of financing. (See, Commission Order, entered May 15, 1995).

5. Commission Staff has recommended approving Huntington's proposed financing for the project, including borrowing up to \$2,271,200 from the West Virginia Pollution Control Revolving Fund. (See, Letter, filed July 28, 1995, with attachment).

### CONCLUSION OF LAW

For all the reasons set forth in Finding of Fact Nos. 2, 3, 4 and 5, it is reasonable to approve Huntington's proposed financing for the project certificated by Commission Order entered on August 2, 1994, in this proceeding, in an amount not to exceed \$2,271,200, to be financed through a loan from the West Virginia Pollution Control Revolving Fund.

### ORDER

IT IS, THEREFORE, ORDERED that the petition filed with the Commission on April 8, 1995, proposing a revised method of financing the proposed sanitary sewer line extension to serve Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road and Miller Road, in Huntington, Cabell County, previously certificated in this proceeding by Commission Order entered August 2, 1994, be granted, so that the City of Huntington is authorized to borrow an amount not to exceed \$2,271,000 from the West Virginia Pollution Control Revolving Fund to finance said project.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Ronnie Z. McCann  
Administrative Law Judge

RZM:dfs

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in  
the City of Charleston on the 2nd day of August, 1994.

~~CASE NO. 93-1013-S-CN~~

THE HUNTINGTON SANITARY BOARD, a  
municipal corporation, Cabell County.

Application for a certificate of convenience  
and necessity to construct a sanitary sewer  
line extension in the Inwood Drive, Shockey  
Drive, McCoy Road, Ridgewood Road, and  
Miller Road areas, Huntington, Cabell County,  
and for approval of financing incidental thereto.

CASE NO. 93-1014-S-CN

THE HUNTINGTON SANITARY BOARD, a  
municipal corporation, Cabell County.

Application for a certificate of convenience  
and necessity to make improvements at the  
Huntington Waste Water Treatment Plant, and  
for approval of financing incidental thereto

COMMISSION ORDER

BACKGROUND

On November 5, 1993 the Huntington Sanitary Board (Huntington or  
Sanitary Board) filed an application for a certificate to construct a  
facilities building at the Huntington Waste Water Treatment Plant, to  
consolidate offices and to improve its existing disinfection facilities.  
This matter was designated as Case No. 93-1014-S-CN. On the same date  
the Sanitary Board filed an application for a certificate to construct a  
sanitary sewer line extension to serve certain areas of the City of  
Huntington. This matter was designated as Case No. 93-1013-S-CN.

These two cases, although not consolidated, were processed together  
by the Administrative Law Judge (ALJ), with separate recommended  
decisions issued on the same date. Because these matters appear to  
share common facts and questions of law, the Commission is of the  
opinion that Case No. 93-1013-S-CN and 93-1014-S-CN should be  
consolidated for further proceedings.

Both applications were unopposed. A joint hearing was held  
before the ALJ on March 15, 1994.

The Sanitary Board had, as part of its certificate application,  
proposed financing in Case No. 93-1013-S-CN which consisted of a  
\$2,200,000 State Revolving Fund (SRF) loan with a twenty year payment  
term and a three percent interest rate. Staff had taken the position

prior to hearing that the Sanitary Board did not need to take a loan for the proposed project because sufficient funds were immediately available to the Board to fully finance the project costs.

Counsel for the Sanitary Board, however, stated at hearing that the City of Huntington had approximately \$14,000,000 in projects planned and had funding available for only about one-third of these. The Sanitary Board had not determined how any particular project would be funded, i.e. through funds already available, through loans or other means. Accordingly, the Sanitary Board asserted that funding for the proposed project was needed, inasmuch as there would be an overall shortfall of available monies. The Sanitary Board further argued, however, that the question of funding and rates should not even be raised in the context of a certificate case involving a municipality, and made a motion in Case No. 93-1013-S-CN that any and all matters relating to rates which the City of Huntington might establish and charge for the use of its municipal sewer system be stricken and excluded from the evidence in that case. As basis for this motion counsel stated that, pursuant to W.Va. Code §24-2-4b, the Commission does not have rate approval authority for municipal sewer service charges unless and until a petition is properly filed and, accordingly, municipal ratemaking is essentially deregulated.

Staff stated at hearing that it would recommend approval of the project itself, but could not recommend approval of the proposed borrowing. Staff did not, however, contest the Sanitary Board's assertion that the Commission would not have jurisdiction over its rates unless a petition was properly filed pursuant to W.Va. Code §24-2-4b.

Counsel for the Sanitary Board was satisfied with Staff's recommendation that the certificate be approved without recommending approval of the proposed loan, so long as the certificate approval was not tied to a certain method of financing.

In regard to Case No. 93-1014-S-CN, Staff placed into evidence at hearing a written recommendation which stated, in part, that the estimated project costs were \$1,837,500, with funding to be provided by an SRF loan at three percent interest for a term of twenty years. Staff also stated in this recommendation that the revenues generated by the Board's existing rates would adequately fund the project and recommended approval of the application in accordance with the above noted method of financing. However, at hearing Staff stated, that it did not, in fact, believe that any borrowing was necessary in Case No. 93-1014-S-CN, for the same reasons set forth in Case No. 93-1013-S-CN.

#### RECOMMENDED DECISIONS

On May 18, 1994, the ALJ issued two recommended decisions. In Case No. 93-1014-S-CN the ALJ recommended that the application for a certificate be granted and ordered that the proposed \$1,837,500 SRF loan be approved.

In Case No. 93-1013-S-CN, the ALJ again recommended that the application for a certificate be granted. The ALJ further recommended

that the proposed project cost, not to exceed \$2,200,000, be approved. The ALJ also recommended, however, that approval of the proposed \$2,200,000 SRF loan be denied. The recommended decision further stated that this denial would not bar Huntington from seeking the Commission's approval to borrow funds for this project and/or other projects in a separate proceeding. The order also stated that Huntington's motion to exclude the issue of rates from the proceeding was granted, but this also would not bar Huntington from later passing a rate ordinance to fund the construction and/or operation of the project. The ALJ further recommended that if the actual bids for the period exceeded the estimated \$2,200,000 construction costs or if the scope or the financing of the project changed for any reason, Huntington would have to obtain Commission approval before proceeding with the construction.

#### EXCEPTIONS

Exceptions were filed by Staff to the recommended decision issued in Case No. 93-1014-S-CN and by the Sanitary Board to the recommended decision issued in Case No. 93-1013-S-CN.

Staff requested in its exceptions that the recommended decision issued in Case No. 93-1014-S-CN be modified to reflect Staff's opposition to the Sanitary Board's borrowing and, further, to deny the proposed project financing. Staff reiterated that it believed that the Sanitary Board possessed sufficient funds with which to finance the project, rendering debt financing unnecessary.

In its exceptions to Case No. 93-1013-S-CN the Sanitary Board argued that the Commission did not have jurisdiction to require Huntington to obtain a certificate, asserting that W.Va. Code §24-2-11 excepts from certificate requirements ordinary extensions of existing systems in the usual course of business. The Board argued that Staff's witness used the term "extend sewer service" in his testimony regarding the proposed construction.

The Sanitary Board also stated that the Supreme Court of Appeals of West Virginia had held, in Duling Brothers Company v. City of Huntington, 120 W.Va. 85, 196 S.E. 552 (1938), that the term "public corporation", found in W.Va. Code §24-2-11, did not include municipal corporations and thus the certification requirements of that statute were not applicable to the Sanitary Board.

The Sanitary Board also argued that, even if it was required to obtain a certificate, such application would not involve consideration by the Commission of rates or the method of financing. The Sanitary Board again referred the Commission to W.Va. Code §24-2-4b, asserting that this statute deregulates municipal ratemaking except under specific circumstances, which do not exist in the instant case.

The Sanitary Board also filed with its exceptions an exhibit which indicated that \$6,678,391 is available for construction and depreciation funds, not \$14,000,000 as erroneously stated in the recommended decision in Case No. 93-1013-S-CN. The Sanitary Board noted that the ALJ must have confused the \$14,000,000 figure, which indicates the total cost of

all proposed projects, with the amount of funds available for those projects. The Sanitary Board further noted that the \$6,678,391 account must also cover reserves for emergency repairs and reconstruction, in addition to new construction.

The Sanitary Board also stated that the ALJ's requirement that Huntington file a separate application or petition with the Commission for approval of borrowing from the SRF was without legal authority, incorrectly stated applicable law and should be stricken.

In summary, the Sanitary Board requested that the Commission hold that the Sanitary Board need not have a certificate of convenience and necessity for the subject project or, in the alternative, that the certificate be issued without any reference, suggestion or decision as to rates or the Sanitary Board's method or means for financing the project.

#### STAFF'S RESPONSE

On June 27, 1994, Staff filed a response to the Sanitary Board's exceptions, asserting that the project in question clearly consists of more than an "ordinary extension" and Staff's use of the word "extend" does not make it otherwise. Accordingly, the Board's attempt to define the project as an ordinary extension of an existing system, not requiring a certificate, must fail.

Staff also noted that the Sanitary Board did not raise the issue of whether a certificate was needed until its exceptions were filed.

Staff further stated that Duling is distinguishable from the instant matter because the project proposed in Duling by the City of Huntington was a flood wall, which did not fall under the Commission's statutorily determined jurisdiction. Staff cited that W.Va. Code §24-2-11 restricts the scope of those corporations requiring a certificate to those entities furnishing to the public any one of those services enumerated in section 1, article 2 of Chapter 24. Additionally, Staff noted that neither statute nor Commission rules remove from the Commission's jurisdiction the authority to rule on the matter of funding proposed for a municipal water or sewer project. Staff also stated that, although Duling has not been explicitly overruled, it has been implicitly overruled as exemplified by Delardas v. Morgantown Water Commission 148 W.Va 776, 137 S.E. 2d 426 (W.Va.), which discussed a certificate application by a municipality but made no mention of the Duling exemption.

Staff also noted that pursuant to the mandate found in W.Va. Code §24-2-11(a), the Commission has promulgated Rule 10.3 of the Commission's Rules of Practice and Procedure (Procedural Rules), which requires utilities applying for a certificate to provide "the manner, in detail, in which it is proposed to finance [the new construction or extension]." Staff argued that a distinct difference exists between rates passed by municipal ordinance, which lie outside the Commission's jurisdiction, and the Commission's consideration of the prudence and reasonableness of financing for a certificate application.

Staff reasserted its contention that the Sanitary Board has sufficient funds on hand to construct the instant project regardless of whether the Sanitary Board has sufficient funds to construct all potential projects. Staff concluded that the Commission clearly has jurisdiction to pass upon the method of financing to be utilized by the Sanitary Board.

#### DISCUSSION

In regard to the Sanitary Board's exceptions, the Commission will first note that it has stated that for an extension to be considered as "in the ordinary course of business," sufficient revenues should be generated out of the utility's operations to cover the costs of the extension. See Tomblinson Run Public Service District, Case No. 85-771-W-PW. In Case No. 93-1013-S-CN the Sanitary Board does not contend that revenues are being generated out of the utility's operations to cover the cost of the extension. The Sanitary Board apparently argues only that the Commission does not have the jurisdiction or authority to review the proposed financing of this project. Thus, the Commission is of the opinion that the proposed project cannot be considered an extension in the ordinary course of business.

In regard to the Sanitary Board's reference to the Duling case, it is simply noted that W.Va. Code §24-1-2 defines a public utility as "any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service." Clearly, municipal corporations providing sewer service are public utilities as defined by W.Va. Code §24-1-2. As a public utility, the Sanitary Board would certainly come within the purview of W.Va. Code §24-2-11 and, accordingly, requires the granting of a certificate of convenience and necessity for its projects which are not ordinary extension in the normal course of business.

As Staff has asserted, there is a distinction between the Commission's authority to pass upon a municipal rate increase, under W.Va. Code §24-2-4b, and its authority to pass upon the financing to be utilized by a utility in its construction of a project, pursuant to W.Va. Code 24-2-11. West Virginia Code §24-2-4b addresses only the very limited area of rate setting and in no way suggests that the Commission's jurisdiction over municipalities in other matters is limited. No other authority has been proposed by the Sanitary Board to support its supposition that the Commission does not have jurisdiction to pass upon the financing of its proposed projects and the Commission decidedly rejects such an attempt to limit its ability to review the actions of a public utility, such as the Sanitary Board, in constructing plant or facilities for furnishing service to the public.

Consideration of the overall financial impact, including rate impact, which a proposed construction project may have upon a public utility, and consequently upon the customers of a public utility, must be an essential element in the Commission's determination of whether approval of a certificate of convenience and necessity is in the public

interest. This is reflected in the fact that the Commission's Procedural Rule 10.3 requires, as noted by Staff, that all utilities filing for such a certificate provide the Commission with information, in detail, regarding the proposed financing of a project. Such information permits the financial feasibility of the project to be analyzed. In addition to Rule 10.3 the Commission has also established policy which requires that a municipality enact an ordinance reflecting a rate level sufficient to cover proforma operating and capital costs and file proof thereof with the Commission at the time the certificate of convenience and necessity is considered, if the municipality believes that a certificate, if approved, will result in the imposition of higher rates upon its consumers. See Re Town of Ripley, 71 ARPSCWV 2120, Case No. 83-332-W-CN, May 7, 1984, affirming in part and reversing, in part, 71 ARPSCWV 2117, February 28, 1984. In this manner, if the municipality's ratepayers wish to protest the rate increase, pursuant to W.Va. Code §24-2-4b, such petition can be considered at the same time as the certificate application.

The Commission's authority to review certificate applications and related financing arises from W.Va. Code §24-1-1, which confers upon the Commission the duty to enforce and regulate the practices and services of all public utilities, including municipally owned, as well as from W.Va. Code §24-2-11 and the Commission's rules and regulations.

Accordingly, the Commission is of the opinion that the exceptions filed by the Sanitary Board must be denied. Furthermore, the Commission concludes that the Sanitary Board has presented no evidence to rebut the Staff's position that there is no need to finance the construction proposed in the applications filed in Case No. 93-1013-S-CN or 93-1014-S-CN with SRF loans or other borrowings. The Commission concludes that the Sanitary Board has sufficient funds available with which to complete both projects. Therefore, the Commission concludes that the applications for a certificate of convenience and necessity filed in Case Nos. 93-1013-S-CN and 93-1014-S-CN should be granted conditioned upon the Sanitary Board financing these projects with its available funds which have been designated to meet construction and depreciation needs.

However, the Commission is cognizant that under certain circumstances it may be more financially prudent for the Sanitary Board to borrow money to complete a construction project than to use savings. Accordingly, if the Sanitary Board provides the Commission with documentation showing that it is, in fact, financially reasonable and prudent for these projects to be financed through borrowing, the Commission will reconsider its decision in these matters. Until such showing is made and accepted by the Commission, however, the granting of the certificate applications in Case Nos. 93-1013-S-CN and 93-1014-S-CN shall remain contingent upon the Sanitary Board using funds already accrued and available.

It is noted that the Commission's decision in this matter has rendered the need to address Staff's exceptions moot.

## FINDINGS OF FACT

1. On November 5, 1993, the Huntington Sanitary Board (Huntington or Sanitary Board) filed an application, designated as Case No. 93-1014-S-CN, for a certificate to construct a facilities building at the Huntington Waste Water Treatment Plant, to consolidate offices and to improve its existing disinfection facilities.

2. On November 5, 1993, the Sanitary Board filed an application, designated as Case No. 93-1013-S-CN, for a certificate to construct a sanitary sewer line extension to serve certain areas in Huntington.

3. A joint hearing was held in these matters on March 15, 1994.

4. The Sanitary Board had, as part of its certificate application, proposed financing in Case No. 93-1013-S-CN which consisted of a \$2,200,000 State Revolving Fund (SRF) loan with a twenty year payment term and a three percent interest rate.

5. Counsel for the Sanitary Board stated at hearing that the City of Huntington had approximately \$14,000,000 in projects planned and had funding available for only about one-third of these projects. (See Transcript of March 15, 1994 hearing at p. 16.)

6. Staff recommended approval of the project but did not recommend approval of the proposed borrowing because the Sanitary Board had adequate funds available to fully fund the project costs. (See Transcript of March 15, 1994 hearing at p. 14.)

7. Counsel for the Sanitary Board made a motion in regard to Case No. 93-1013-S-CN asking that any and all matters relating to rates which the City of Huntington might establish and charge for the use of its municipal sewer system be stricken and excluded from the evidence in that case, stating that pursuant to W.Va. Code §24-2-4b the Commission does not have rate approval authority for municipal sewer service charges unless and until a petition is properly filed. (See Transcript of March 15, 1994 hearing at p. 6.)

8. In regard to Case No. 93-1014-S-CN, Staff placed into evidence at hearing a written recommendation which stated, in part, that approval of the application should be granted.

9. At hearing, Staff stated that it did not recommend that any borrowing be approved in Case No. 93-1014-S-CN inasmuch as the Sanitary Board had sufficient funds on hand for the proposed project. (See Transcript of March 15, 1994 hearing at p. 19.)

10. On May 18, 1994, the ALJ issued a recommended decision in Case No. 93-1014-S-CN in which he recommended that the application for a certificate of convenience and necessity be granted and that the proposed project financing, comprised of a \$1,837,500 SRF loan, be approved.

11. On May 18, 1994, the ALJ issued a recommended decision in Case No. 93-1013-S-CN in which he recommended that the application for a certificate of convenience and necessity be granted; that the proposed project cost, not to exceed \$2,200,000, be approved; that approval of the proposed \$2,200,000 SRF loan be denied; and that if actual bids exceeded the estimated \$2,200,000 construction cost or if the scope of the financing of the project changed for any reason, further Commission approval must be obtained before construction could proceed.

12. Exceptions were filed by Staff to the recommended decision in Case No. 93-1014-S-CN, in which Staff requested that the recommended decision be modified to reflect Staff's opposition to the Sanitary Board's acquisition of a loan and, further, to deny the proposed project financing.

13. Exceptions were filed by the Sanitary Board to the recommended decision in Case No. 93-1013-S-CN in which the Sanitary Board requested that the Commission hold that the Sanitary Board need not have a certificate of convenience and necessity for the subject project or, in the alternative, that the certificate be issued without any reference, suggestion or decision as to rates or the Sanitary Board's method or means for financing the project.

14. The Sanitary Board filed with its exceptions an exhibit which indicated that it has \$6,678,391 available for construction and depreciation use.

15. On June 27, 1994, Staff filed a response to the Sanitary Board's exceptions.

#### CONCLUSIONS OF LAW

1. It is reasonable to conclude that Case No. 93-1013-S-CN and Case No. 93-1014-S-CN should be consolidated for all further proceedings.

2. The Commission has stated that for an extension to be considered as "in the ordinary course of business," sufficient revenues should be generated out of the utility's operations to cover the costs of the extension. See Tomblinson Run Public Service District, Case No. 85-771-W-PW.

3. Inasmuch as the Sanitary Board does not contend that revenues are being generated out of the utility's operations to cover the costs of the extension proposed in Case No. 93-1013-S-CN, it is reasonable to conclude that this extension cannot be considered to be "in the ordinary course of business."

4. A public utility is "any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service." W.Va. Code §24-1-2.

5. It is reasonable to conclude that the Huntington Sanitary Board, as a municipality providing sewer service, is a public utility as defined by W.Va. Code §24-1-2 and, accordingly, requires the granting of certificates of convenience and necessity for the subject projects, pursuant to W.Va. Code §24-2-11.

6. It is reasonable to conclude that W.Va. Code §24-2-4b addresses only the very limited area of municipal ratesetting and in no way suggests that the Commission's jurisdiction over municipalities in other matters shall be limited or impinged upon.

7. It is reasonable to conclude that the overall financial impact, including rate impact, which a proposed utility construction project may have upon a public utility, and consequently upon the customers of a public utility, must be an essential element in the Commission's determination of whether approval of a certificate of convenience and necessity is appropriate.

8. It is reasonable to conclude that the Commission's authority to consider such matters as project financing in its review of an application for a certificate of convenience and necessity arises from W.Va. Code §24-1-1, which confers upon the Commission the duty to enforce and regulate the practices and services of public utilities, as well as from W.Va. Code §24-2-11, the Commission's rules and regulations and Commission policy.

9. It is reasonable to conclude that the exceptions filed by the Sanitary Board must be denied.

10. It is reasonable to conclude that the Sanitary Board has no need to finance the construction proposed in the applications filed in Case Nos. 93-1013-S-CN and 93-1014-S-CN with SRF loans or other borrowings inasmuch as the Sanitary Board has provided evidence that it has adequate funding available to construct both projects and, accordingly, the proposed SRF loans should be disapproved.

11. It is reasonable to conclude that the applications for a certificate of convenience and necessity filed in Case Nos. 93-1013-S-CN and 93-1014-S-CN should be granted conditioned upon the Sanitary Board financing these projects with the funds it has accrued and designated to meet construction and depreciation needs.

12. It is reasonable to conclude that under certain circumstances it may be financially prudent for the Sanitary Board to borrow money to complete a construction project rather than to use accumulated funds and, accordingly, if the Sanitary Board provides the Commission with documentation showing that it is, in fact, a more reasonable and efficient financial plan for these projects to be financed through borrowing rather than from the Sanitary Board's cash reserves, the Commission will reconsider its decision in these matters.

ORDER

IT IS, THEREFORE, ORDERED that Case Nos. 93-1013-S-CN and 93-1014-S-CN be, and they hereby are consolidated.

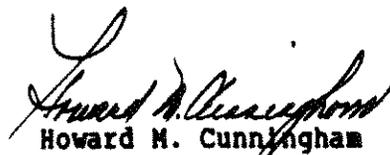
IT IS FURTHER ORDERED that the recommended decisions issued in Case Nos. 93-1013-S-CN and 93-1014-S-CN on May 18, 1994 shall be adopted insofar as they grant approval of the requested certificates of convenience and necessity but shall be modified to the extent that such approval is conditioned upon the Huntington Sanitary Board financing the proposed projects with funds it has available, rather than with loans.

IT IS FURTHER ORDERED that if the Sanitary Board provides the Commission with documentation showing that it is a more reasonable and efficient financial plan for the Sanitary Board to finance these projects through loans rather than through accrued savings, the Commission will take such a showing under advisement in a reconsideration of its decision in these matters.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:

ARC

  
Howard M. Cunningham  
Executive Secretary

Commissioner Frum will dissent in a separate opinion.

TELEGRAM/931013 OR1

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 2nd day of August, 1994.

CASE NO. 93-1013-S-CN

THE HUNTINGTON SANITARY BOARD, a  
municipal corporation, Cabell County.

Application for a certificate of convenience and necessity to construct a sanitary sewer line extension in the Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road, and Miller Road areas, Huntington, Cabell County, and for approval of financing incidental thereto.

CASE NO. 93-1014-S-CN

THE HUNTINGTON SANITARY BOARD, a  
municipal corporation, Cabell County.

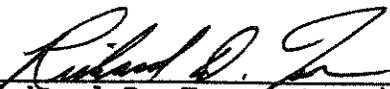
Application for a certificate of convenience and necessity to make improvements at the Huntington Waste Water Treatment Plant, and for approval of financing incidental thereto.

COMMISSIONER FRUM DISSENTING

I respectfully dissent from the majority opinion. I am of the opinion that the only legitimate interest this Commission has in reviewing a certificate of need application of a municipal utility is to determine whether or not the public convenience and necessity will be served by approval of the application. In undertaking such a determination, the Commission should inquire into the rate implications of the applications. Obviously, an application for approval of a project which would cause the municipality to incur excessive costs could result in rates which clearly would make approval contrary to the public interest and, therefore, contrary to the public convenience and necessity.

In the instant matter, no showing was made as to the affect the application, if approved, would have on rates. The Commission simply determined that the Applicant would be required to use its accumulated surplus, absent a showing that use of borrowing for project financing would be "a more reasonable and efficient financial plan." It is my opinion that this is the very kind of meddling into the operations of city government that the Legislature sought to eliminate with the passage of West Virginia Code §24-2-4b.

The majority decision, if allowed to stand, will result in the micro-management of the utility function of the municipality by requiring the utility to expend funds which it has accrued and held for other utility "priority projects." The Commission has heretofore had no jurisdiction over such funds and it is my opinion that no evidence of record gives rise to the need for the Commission to take such jurisdiction now. The majority in my opinion has overstepped its jurisdictional bounds.

  
Richard D. Frum, Commissioner

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: May 18, 1994

CASE NO. 93-1013-S-CN

THE HUNTINGTON SANITARY BOARD, a  
municipal corporation, Cabell County.

Application for a certificate of convenience  
and necessity to construct a sanitary sewer  
line extension in the Inwood Drive, Shockey  
Drive, McCoy Road, Ridgewood Road, and Miller  
Road areas, Huntington, Cabell County, and for  
approval of financing incidental thereto.

RECOMMENDED DECISION

On November 5, 1993, The Huntington Sanitary Board (Huntington), a municipal corporation, Huntington, Cabell County, filed an application with the Public Service Commission, pursuant to West Virginia Code (Code) §24-2-11, for a certificate of convenience and necessity to construct a sanitary sewer line extension to serve the areas of Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road and Miller Road, in Huntington, Cabell County, and for approval of financing incidental to providing such service.

On November 5, 1993, the Commission directed Huntington to publish the Notice of Filing. The Notice of Filing provided that, if no substantial protests were filed within thirty (30) days, the Commission may waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application. Pursuant thereto, on December 15, 1993, Huntington filed a publication affidavit indicating that the Notice of Filing had been published as directed on November 10, 1993, and on November 16, 1993, in The Herald Dispatch, a newspaper published and generally circulated in Cabell County, West Virginia. No protests were filed with the Commission.

On December 6, 1993, the Commission Referral Order was entered in this proceeding, referring this matter to the Division of Administrative Law Judges for decision on or before June 3, 1994. Pursuant thereto, on December 10, 1993, the Administrative Law Judge (ALJ) issued a Procedural Order establishing a procedural schedule to be followed to process and resolve this matter, including a March 11, 1994 hearing date. A subsequent Procedural Order, issued on February 8, 1994, continued the hearing date to March 15, 1994.

On March 15, 1994, the hearing was held before the ALJ as scheduled. Huntington appeared at the hearing by counsel, Robert M. Levy, Esquire, and Commission Staff appeared by counsel, Staff Attorney J. Joseph Watkins, Esquire. No other parties appeared.

Neither party presented any testimony, but Commission Staff presented two exhibits. At the hearing, the parties waived their rights, pursuant to Code §24-1-9(b), to file proposed findings of fact and conclusions of law, or briefs.

#### EVIDENCE

At the hearing, Huntington moved the ALJ to exclude from this proceeding all references to rates, arguing that, since no rate ordinance had been passed by Huntington from which an appeal could be taken, pursuant to Code §24-2-4(b), the Commission has no jurisdiction to address Huntington's rates in the instant proceeding. Huntington indicated that it would pass a rate ordinance, if one was needed, at a later date. Commission Staff, by counsel, indicated that it did not oppose granting the requested certificate, thereby leaving Huntington rates unchanged. However, Commission Staff opposed Huntington's proposed financing method, i.e., Commission Staff opined that Huntington did not need to borrow money to fund the proposed project. Counsel for Huntington acknowledged that Huntington has up to \$14,000,000 in cash on hand, some of which would be available for this project. He emphasized, however, that Huntington has several large projects planned, and that it will have to borrow money for some of these projects. (Tr., pp. 3-22).

Staff Exhibit No. 1 comprises the proposed direct testimony of Staff Engineer James E. Spurlock II, Water and Sewer Section, Utilities Division. Mr. Spurlock testified that the proposed service area currently is served by individual septic tank systems, many of which do not meet Health Department standards. He related that the soil and topography in the area will not accommodate septic systems, and he opined that Huntington's public sewer system needs to be extended to serve this area. He opined that the proposed project is the most cost-effective method to correct the problem. He related that, since the need for the project is clear, he recommended approval, subject to final approval of the plans and specifications by the Division of Environmental Protection (DEP). (Staff Exhibit No. 1, pp. 1-3).

Staff Exhibit No. 2 comprises the prepared direct testimony of Utilities Analyst Sterling E. Bare, Water and Sewer Section, Utilities Division. Mr. Bare estimated that the project would cost \$2,200,000. He related that Huntington has proposed borrowing this entire amount from the State Revolving Fund (SRF), with a 20-year payment term and a 3% interest rate. He also related that Huntington intended to add a surcharge to its rates to cover the debt service created by this loan. He opined that Huntington's existing rates would be sufficient to fund the construction and operation of the project. (Staff Exhibit No. 2, pp. 1-3).

#### DISCUSSION

The ALJ has considered all of the above, and he holds that the application for a certificate of convenience and necessity should be granted. It is clear that a need exists for the proposed project, since no protests have been filed; since the area is served by failing individual septic systems; since the soil and topography of the area are not conducive to serving the area with individual septic systems; since

the proposed project is the most cost-effective method to serve the area; and since Commission Staff has opined that the public convenience and necessity require the project. The ALJ will not approve Huntington's proposal to borrow funds for this project, since it is clear that Huntington has sufficient funds on hand to finance this project. Should Huntington later decide that it needs additional funding for this or its other large projects, it will have to file a separate case for approval of the borrowing. Finally, Huntington's rates shall remain unchanged, since no additional rates are required unless debt service is incurred through borrowing. Should higher rates, or a surcharge, be needed, Huntington is free to pass a rate ordinance.

#### FINDINGS OF FACT

1. The Huntington Sanitary Board filed an application with the Commission, pursuant to Code §24-2-11, for a certificate of convenience and necessity to construct a sanitary sewer line extension to serve the areas of Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road and Miller Road, in Huntington, Cabell County, and for approval of financing incidental to providing such service. (See, Application, filed November 5, 1993).
2. Huntington published the Notice of Filing in The Herald Dispatch on November 10, 1993, and on November 16, 1993, providing a 30-day protest period. No protests were filed. (See, Commission's file).
3. Huntington moved the ALJ to disregard any references to rates in this proceeding. (See, Tr., pp. 3-22, comments by counsel).
4. Huntington has up to \$14,000,000 cash on hand, some or all of which is available for the proposed project. (See, representation of counsel, Tr., pp. 3-22).
5. The proposed service area currently is served by individual septic tank systems which do not meet Health Department standards. The soil and topography of the area are not conducive to individual septic systems. (See, Testimony of James E. Spurlock, II, Staff Exhibit No. 1, pp. 1-3).
6. Commission Staff opined that the need to extend Huntington's public sewer system into the proposed service area was clearly established in this proceeding. (See, Testimony of James E. Spurlock, II, Staff Exhibit No. 1, pp. 1-3).
7. The proposed project is the most cost-effective method to provide public sewer service to the proposed service area. (See, Testimony of James E. Spurlock, II, Staff Exhibit No. 1, pp. 1-3).
8. Commission Staff recommended approval of the application, subject to final approval of the plans and specifications by the DEP. (See, Testimony of James E. Spurlock, II, Staff Exhibit No. 1, pp. 1-3).
9. The proposed project will cost an estimated \$2,200,000. (See, Testimony of Sterling E. Bare, Staff Exhibit No. 2, pp. 1-3).

10. Huntington has proposed borrowing the full amount to fund this project, with a SRF loan having a 20-year payment term and a 3% interest rate. (See, Testimony of Sterling E. Bare, Staff Exhibit No. 2, pp. 1-3).

11. Commission Staff opined that Huntington intended to add a surcharge to its existing rates to cover the debt service created by the proposed SRF loan. (See, Testimony of Sterling E. Bare, Staff Exhibit No. 2, pp. 1-3).

12. Commission Staff opined that no surcharge was needed and that Huntington's existing rates are sufficient to fund the construction and operation of the project. (See, Testimony of Sterling E. Bare, Staff Exhibit No. 2, pp. 1-3).

#### CONCLUSIONS OF LAW

1. For all of the reasons set forth in Findings of Fact Nos. 2, 5, 6, 7 and 8, it is reasonable to conclude that public convenience and necessity require the project, and it is reasonable to grant the application, subject to final approval by the DEP of the plans and specifications.

2. For all of the reasons set forth in Findings of Fact Nos. 3 and 12, it is reasonable to grant Huntington's motion to not address rates in this proceeding. However, this action shall not prohibit Huntington from later passing a rate ordinance related to this project.

3. For all of the reasons set forth in Findings of Fact Nos. 4, 9 and 12, it is reasonable to deny Huntington's proposed borrowing to fund the project. It is reasonable to approve a ceiling of \$2,200,000 for the project, with the understanding that, should Huntington later need to borrow funds to complete this project, Huntington would have to file a separate application or petition with the Commission for approval of such borrowing. Also, should the bids for the project exceed the estimated \$2,200,000 cost, Huntington would have to reopen this certificate proceeding to obtain the Commission's approval to proceed with the project.

#### ORDER

IT IS, THEREFORE, ORDERED, that the application filed with the Commission on November 5, 1993, by The City of Huntington, pursuant to Code §24-2-11, for a certificate of convenience and necessity to construct a sanitary sewer line extension to serve the areas of Inwood Drive, Shockey Drive, McCoy Road, Ridgewood Road and Miller Road, in Huntington, West Virginia, be, and it hereby is, granted, subject to final approval by the Department of Environmental Protection of the plans and specifications.

IT IS FURTHER ORDERED that the proposed project cost, not to exceed \$2,200,000, be, and it hereby is, approved.

IT IS FURTHER ORDERED that approval of the proposed \$2,200,000 SRF loan, with a 20-year payment term and a 3% interest rate, be, and it

hereby is, denied. This shall not bar Huntington from seeking the Commission's approval to borrow funds for this project, and/or other projects, in a separate proceeding.

IT IS FURTHER ORDERED that Huntington's motion made at hearing to not address rates in this proceeding, be, and it hereby is, granted. This shall not bar Huntington from later passing a rate ordinance to fund the construction and/or operation of this project.

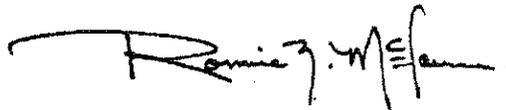
IT IS FURTHER ORDERED that, should the actual bids exceed the estimated \$2,200,000 construction costs for the project, or should the scope or the financing of the project change for any reason, Huntington shall first obtain Commission approval before proceeding with the construction of the project.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed, this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Ronnie Z. McCann  
Administrative Law Judge

RZM:pst



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Mayor of The City of Huntington (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the 25th day of November, 1997, the Authority received the entire original issue of \$3,039,895 principal amount of the Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), of the Issuer (the "Bonds"), issued as a single, fully registered Bond, numbered R-1, and dated November 25, 1997.
2. At the time of such receipt of the Bonds upon original issuance, the Bonds had been executed by the Mayor and the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.
3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Bonds, of \$3,039,895, being the entire principal amount of the Bonds.

WITNESS our respective signatures on this 25th day of November, 1997.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

Barbara B Meadows  
Authorized Representative

THE CITY OF HUNTINGTON

John Dean  
Mayor

11/10/97  
435500/94001



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

One Valley Bank, National Association,  
as Bond Registrar  
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith:

- (1) Bond No. R-1, constituting the entire original issue of The City of Huntington Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), in the principal amount of \$3,039,895, dated November 25, 1997 (the "Bonds"), executed by the Mayor and the City Clerk of The City of Huntington (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on December 11, 1995, and a Supplemental Resolution duly adopted by the Issuer on November 10, 1997 (collectively, the "Bond Legislation");
- (2) A copy of the Bond Legislation authorizing the above-described Bond issue, duly certified by the City Clerk of the Issuer;
- (3) Executed counterparts of the loan agreement dated October 17, 1997, by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP") and the Issuer (the "Loan Agreement"); and
- (4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the Issuer of the sum of \$3,039,895, representing the entire principal amount of the Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated this 25th day of November, 1997.

THE CITY OF HUNTINGTON

A handwritten signature in cursive script, appearing to read "Sean Sean", written over a horizontal line.

Mayor

11/10/97  
435500/94001



(SPECIMEN BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF HUNTINGTON  
SEWER REVENUE BOND,  
SERIES 1997  
(WEST VIRGINIA SRF PROGRAM)

No. R-1

\$3,039,895

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF HUNTINGTON, a municipal corporation and political subdivision of the State of West Virginia in Cabell County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of THREE MILLION THIRTY-NINE THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS (\$3,039,895), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1998, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1998, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Division of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated October 17, 1997.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iii) to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on December 11, 1995, and a Supplemental Resolution duly adopted by the Issuer on November 10, 1997 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

**THIS BOND IS ISSUED ON PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993, DATED NOVEMBER 1, 1993, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,100,000 (THE "PRIOR BONDS").**

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1995 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 1995 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 120% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds, so long as the Prior Bonds are outstanding, and thereafter, 115% of such amount; provided however, that, if the Prior Bonds are no longer outstanding and so long as there exists in the Series 1995 Bonds Reserve

Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the reserve accounts established for any other obligations outstanding prior to or on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the Costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF HUNTINGTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated November 25, 1997.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 1995 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: November 25, 1997.

ONE VALLEY BANK, NATIONAL  
ASSOCIATION, as Registrar

---

Authorized Officer

EXHIBIT A  
RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$3,039,895	11-25-97	(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	
	<b>TOTAL</b>	<b>\$3,039,895</b>	

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

City of Huntington, West Virginia  
 \$3,039,895.00 Loan -- 2% Interest, 1% Admin. Fee  
 20 Years

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
3/01/1998				
6/01/1998	29,209.00	2.000%	15,199.48	44,408.48
9/01/1998	29,355.04	2.000%	15,053.43	44,408.47
12/01/1998	29,501.82	2.000%	14,906.65	44,408.47
3/01/1999	29,649.33	2.000%	14,759.15	44,408.48
6/01/1999	29,797.57	2.000%	14,610.90	44,408.47
9/01/1999	29,946.56	2.000%	14,461.91	44,408.47
12/01/1999	30,096.29	2.000%	14,312.18	44,408.47
3/01/2000	30,246.77	2.000%	14,161.70	44,408.47
6/01/2000	30,398.01	2.000%	14,010.46	44,408.47
9/01/2000	30,550.00	2.000%	13,858.47	44,408.47
12/01/2000	30,702.75	2.000%	13,705.72	44,408.47
3/01/2001	30,856.26	2.000%	13,552.21	44,408.47
6/01/2001	31,010.54	2.000%	13,397.93	44,408.47
9/01/2001	31,165.60	2.000%	13,242.88	44,408.48
12/01/2001	31,321.42	2.000%	13,087.05	44,408.47
3/01/2002	31,478.03	2.000%	12,930.44	44,408.47
6/01/2002	31,635.42	2.000%	12,773.05	44,408.47
9/01/2002	31,793.60	2.000%	12,614.87	44,408.47
12/01/2002	31,952.57	2.000%	12,455.90	44,408.47
3/01/2003	32,112.33	2.000%	12,296.14	44,408.47
6/01/2003	32,272.89	2.000%	12,135.58	44,408.47
9/01/2003	32,434.26	2.000%	11,974.22	44,408.48
12/01/2003	32,596.43	2.000%	11,812.04	44,408.47
3/01/2004	32,759.41	2.000%	11,649.06	44,408.47
6/01/2004	32,923.21	2.000%	11,485.27	44,408.48
9/01/2004	33,087.82	2.000%	11,320.65	44,408.47
12/01/2004	33,253.26	2.000%	11,155.21	44,408.47
3/01/2005	33,419.53	2.000%	10,988.94	44,408.47
6/01/2005	33,586.63	2.000%	10,821.85	44,408.48
9/01/2005	33,754.56	2.000%	10,653.91	44,408.47
12/01/2005	33,923.33	2.000%	10,485.14	44,408.47
3/01/2006	34,092.95	2.000%	10,315.52	44,408.47
6/01/2006	34,263.41	2.000%	10,145.06	44,408.47
9/01/2006	34,434.73	2.000%	9,973.74	44,408.47
12/01/2006	34,606.90	2.000%	9,801.57	44,408.47
3/01/2007	34,779.94	2.000%	9,628.53	44,408.47
6/01/2007	34,953.84	2.000%	9,454.63	44,408.47
9/01/2007	35,128.61	2.000%	9,279.86	44,408.47
12/01/2007	35,304.25	2.000%	9,104.22	44,408.47
3/01/2008	35,480.77	2.000%	8,927.70	44,408.47
6/01/2008	35,658.17	2.000%	8,750.30	44,408.47
9/01/2008	35,836.47	2.000%	8,572.01	44,408.48
12/01/2008	36,015.65	2.000%	8,392.82	44,408.47
3/01/2009	36,195.73	2.000%	8,212.75	44,408.48

City of Huntington, West Virginia  
 \$3,039,895.00 Loan .. 2% Interest, 1% Admin. Fee  
 20 Years

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
6/01/2009	36,376.71	2.000%	8,031.77	44,408.48
9/01/2009	36,558.59	2.000%	7,849.88	44,408.47
12/01/2009	36,741.38	2.000%	7,667.09	44,408.47
3/01/2010	36,925.09	2.000%	7,483.38	44,408.47
6/01/2010	37,109.71	2.000%	7,298.76	44,408.47
9/01/2010	37,295.26	2.000%	7,113.21	44,408.47
12/01/2010	37,481.74	2.000%	6,926.73	44,408.47
3/01/2011	37,669.15	2.000%	6,739.32	44,408.47
6/01/2011	37,857.49	2.000%	6,550.98	44,408.47
9/01/2011	38,046.78	2.000%	6,361.69	44,408.47
12/01/2011	38,237.01	2.000%	6,171.46	44,408.47
3/01/2012	38,428.20	2.000%	5,980.27	44,408.47
6/01/2012	38,620.34	2.000%	5,788.13	44,408.47
9/01/2012	38,813.44	2.000%	5,595.03	44,408.47
12/01/2012	39,007.51	2.000%	5,400.96	44,408.47
3/01/2013	39,202.55	2.000%	5,205.92	44,408.47
6/01/2013	39,398.56	2.000%	5,009.91	44,408.47
9/01/2013	39,595.55	2.000%	4,812.92	44,408.47
12/01/2013	39,793.53	2.000%	4,614.94	44,408.47
3/01/2014	39,992.50	2.000%	4,415.97	44,408.47
6/01/2014	40,192.46	2.000%	4,216.01	44,408.47
9/01/2014	40,393.42	2.000%	4,015.05	44,408.47
12/01/2014	40,595.39	2.000%	3,813.08	44,408.47
3/01/2015	40,798.37	2.000%	3,610.10	44,408.47
6/01/2015	41,002.36	2.000%	3,406.11	44,408.47
9/01/2015	41,207.37	2.000%	3,201.10	44,408.47
12/01/2015	41,413.41	2.000%	2,995.06	44,408.47
3/01/2016	41,620.47	2.000%	2,788.00	44,408.47
6/01/2016	41,828.58	2.000%	2,579.90	44,408.48
9/01/2016	42,037.72	2.000%	2,370.75	44,408.47
12/01/2016	42,247.91	2.000%	2,160.56	44,408.47
3/01/2017	42,459.15	2.000%	1,949.32	44,408.47
6/01/2017	42,671.44	2.000%	1,737.03	44,408.47
9/01/2017	42,884.80	2.000%	1,523.67	44,408.47
12/01/2017	43,099.22	2.000%	1,309.25	44,408.47
3/01/2018	43,314.72	2.000%	1,093.75	44,408.47
6/01/2018	43,531.29	2.000%	877.18	44,408.47
9/01/2018	43,748.95	2.000%	659.52	44,408.47
12/01/2018	43,967.70	2.000%	440.78	44,408.48
3/01/2019	44,187.52	2.000%	220.94	44,408.46
<b>TOTAL</b>	<b>3,039,895.00</b>	<b>-</b>	<b>690,416.58</b>	<b>3,730,311.58 *</b>

\*Plus \$4,315 one-percent administrative fee paid quarterly.  
 Total fee paid over the life of the loan is \$345,200.00.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_



# STEP TOE & JOHNSON

ATTORNEYS AT LAW

BANK ONE CENTER

SIXTH FLOOR

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

November 25, 1997

The City of Huntington

Sewer Revenue Bonds, Series 1997

(West Virginia SRF Program)

BANK ONE CENTER, SEVENTH FLOOR  
P. O. BOX 1588  
CHARLESTON, W. VA. 25326-1588  
(304) 353-8000  
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER  
P. O. BOX 1616  
MORGANTOWN, W. VA. 26507-1616  
(304) 598-8000  
FACSIMILE (304) 598-8116

126 EAST BURKE STREET  
P. O. BOX 2629  
MARTINSBURG, W. VA. 25402-2629  
(304) 263-6991  
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET  
P. O. BOX 100  
CHARLES TOWN, W. VA. 25414-0100  
(304) 728-1414  
FACSIMILE (304) 728-1913

RILEY BUILDING, FOURTH FLOOR  
14TH AND CHAPLINE STREETS  
P. O. BOX 180  
WHEELING, W. VA. 26003-0080  
(304) 233-0000  
FACSIMILE (304) 233-0014

THE RIVERS OFFICE PARK  
200 STAR AVENUE, SUITE 220  
P. O. BOX 628  
PARKERSBURG, W. VA. 26102-0628  
(304) 422-6463  
FACSIMILE (304) 422-6462

WRITER'S DIRECT DIAL NUMBER

The City of Huntington  
Huntington, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Division of  
Environmental Protection  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by The City of Huntington (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$3,039,895 Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated October 17, 1997, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection (the "DEP") and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal installments and interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1998, and ending March 1, 2019, all as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and

improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding a reserve account for the Bonds; and (iii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on December 11, 1995, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 10, 1997 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing, and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Bond Legislation and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's outstanding Sewerage System Refunding Revenue Bonds, Series 1993, dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000, all in accordance with the terms of the Bonds and the Bond Legislation.

5. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. Except as set forth in paragraph 6 below, we express no opinion regarding other federal tax consequences arising with respect to the Bonds.

6. Based upon the certifications of the Issuer set forth in the Certificate as to Arbitrage and under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the proceeds of the Bonds are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code. The opinion set forth above is subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code relating to the applicable exceptions to rebate. The Issuer has covenanted to comply with all such requirements. Failure to comply with such requirements could cause proceeds of the Bonds to be subject to such arbitrage rebate requirements retroactive to the date of issuance of the Bonds.

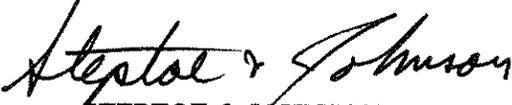
7. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, and the interest on the Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Loan Agreement and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

The City of Huntington, et.al.  
Page 4

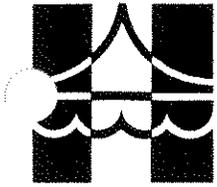
We have examined the executed and authenticated Bond numbered R-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

  
STEPTOE & JOHNSON

10/22/97  
435500/94001





**CITY OF  
HUNTINGTON**  
WEST VIRGINIA

**OFFICE OF THE CITY ATTORNEY**  
City Hall, P.O. Box 1659, Zip 25717  
Phone (304) 696-4480

November 25, 1997

The City of Huntington  
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

The City of Huntington  
Huntington, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Division of  
Environmental Protection  
Charleston, West Virginia

Steptoe & Johnson  
Clarksburg, West Virginia

Ladies and Gentlemen:

I am the City Attorney of the City of Huntington in Cabell and Wayne Counties, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson, as bond counsel, a loan agreement dated October 17, 1997, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP"), and the Issuer, a Bond Ordinance duly enacted by the Issuer on December 11, 1995, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 10, 1997 (collectively, the "Bond Legislation"), and other documents related to the above-captioned Bonds of the Issuer (the "Bonds"). Capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.
2. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, City Clerk, City Manager and members of the council of the Issuer and the Sanitary Board have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.
3. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.
4. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Loan Agreement and the Bond Legislation and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.
5. The Issuer has received all permits, licenses, approvals and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates

and charges. The time for appeal of the Final Order of the Public Service Commission of West Virginia entered on May 18, 1994, August 2, 1994, August 29, 1995 and May 24, 1996, in Case No. 93-1012-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project has expired prior to the date hereof without any appeal.

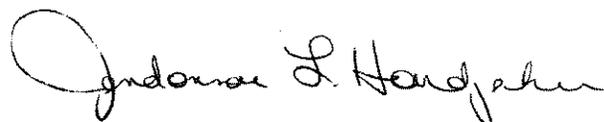
6. Except as stated in the attached letter from S. Benjamin Bryant, as indicated below, there is no action, suit, proceeding or investigation at law or in equity before or by any court, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues therefore. There is pending in the Circuit Court of Cabell County, West Virginia, Civil Action No. 96-C-470, entitled Huntington City Council v. Huntington Sanitary Board, together with a companion case, Civil Action No. 97-C-194, entitled Huntington Sanitary Board vs. Huntington City Council. I am advised by Mr. Bryant that the parties to these actions have reached an agreement as to the resolution in principal as the questions involved, which only awaits formal approval by Huntington City Council. I do not anticipate, based upon the letter of Mr. Bryant, any financial exchange on the part of either party, as part of this resolution in principal, and I further do not anticipate, based upon the letter of Mr. Bryant, that either party will make an admission as to any of the issues described below as part of the resolution in principal. The issues before the court are:
  - a. Whether the Sanitary Board was required to obtain approval of City Council of the construction contract with respect to the Miller/Shockey Extension Project, under

West Virginia Code §16-13-3 and Division 2, Article 26,  
Section 145 of the Code of the City of Huntington.

- b. Whether the Sanitary Board failed to follow the procedures required by West Virginia Code §5G-1-3 in the procurement of engineering services for the Miller/Shockey Extension Project.
- c. Under the applicable state statutes, Charter and ordinances of the City of Huntington, whether the Mayor or City Council is vested with the power to appoint two (2) members of the Huntington Sanitary Board.
- d. Whether City Council has the power to require approval by Council of the Sanitary Board's budget.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,



Jendonnae L. Houdyschell  
City Attorney

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**KING ALLEN & GUTHRIE**

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ROBERT A. GOLDBERG  
S. BENJAMIN BRYANT  
MICHAEL W. McARDLE  
WM. SCOTT WICKLINE  
PAMELA L. KANDZARI  
JAMES P. McHUGH  
BLAKE O. BREWER  
MICHELLE M. PRICE  
L. ANNA CRAWFORD  
NICHOLAS P. MOONEY II  
GEORGE RILEY THOMAS II  
SUSAN M. MURRAY

November 21, 1997

**BY FAX AND U. S. MAIL**

City of Huntington  
Office of the City Attorney  
City Hall  
P. O. Box 1659  
Huntington, West Virginia 25714

Vincent Collins, Esq.  
Francesca Tan, Esq.  
Steptoe & Johnson  
P. O. Box 2190  
Clarksburg, West Virginia 26302-2190

**RE: Huntington City Council v.  
Huntington Sanitary Board  
Civil Action No. 96-C-00470  
Circuit Court of Cabell County, WV**

**Huntington Sanitary Board v.  
The City Council of the City of Huntington, et al  
Civil Action No. 97-C-0194  
Circuit Court of Cabell County, WV**

Dear Counsel:

This Firm has served as Special Counsel to the City Council of the City of Huntington, West Virginia since June 1996, with respect to the above-referenced declaratory judgment actions pending in the Circuit Court of Cabell County, West Virginia. You have asked me to comment on the status of those actions.

The City Council filed a petition for declaratory judgment and a preliminary injunction in Civil Action No. 96-C-470, entitled Huntington City Council v. Huntington Sanitary Board. The issues before the Court in that action are: (1) whether the Sanitary Board was required to obtain approval of City Council of the construction contract with respect to the Miller/Shockey Extension Project, under West Virginia Code, § 16-13-3 and

## KING ALLEN & GUTHRIE

The City of Huntington  
November 21, 1997  
Page 2

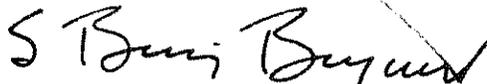
Division 2, Article 26, § 145 of the Code of the City of Huntington; and (2) whether the Sanitary Board failed to follow the procedures required by West Virginia Code, § 5G-1-3 in the procurement of engineering services for the Miller/Shockey Extension Project.

The Huntington Sanitary Board filed a petition for declaratory judgment in Civil Action No. 97-C-0194, entitled Huntington Sanitary Board v. The City Council of the City of Huntington, et al. The issues before the Court in that action are: (1) under the applicable state statutes, charter and ordinances of the City of Huntington, whether the Mayor or City Council is vested with the power to appoint two members of the Huntington Sanitary Board; and (2) whether City Council has the power to require approval by Council of the Sanitary Board's budget.

Acting through their representatives and counsel, the parties to these actions have reached an agreement in principle by which both actions will be resolved by settlement and the entry of a consent decree or decrees. As set forth in correspondence, and contemplated by the parties, this settlement will not involve any financial exchange on the part of either party, nor will either party make any admission of wrongdoing or liability.

As you well know, consummation and completion of these civil actions will require appropriate action by City Council, involving approval of the proposed settlement by resolution, and the enactment of certain changes to the Code of The City of Huntington to reflect the settlement.

Very truly yours,



S. BENJAMIN BRYANT

SBB:jeg

cc: Rev. Larry Patterson

LEVY, TRAUTWEIN & PANCAKE, L.C.

ATTORNEYS AT LAW

MORRIS BUILDING, SUITE 200

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PETER D. LEVY  
DAVID M. PANCAKE  
JOE N. PATTON (1927-1974)

TELEPHONE  
(304) 525-8133  
FAX (304) 525-8150

November 25, 1997

re: The City of Huntington  
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

Huntington Sanitary Board  
Huntington, West Virginia

The City of Huntington  
Huntington, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Division of  
Environmental Protection  
Charleston, West Virginia

Steptoe & Johnson  
Clarksburg, West Virginia

Ladies and Gentlemen:

I am Counsel to the Sanitary Board (the "Board") of The City of Huntington in Cabell and Wayne Counties, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson, as bond counsel, a loan agreement dated October 17, 1997, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "DEP"), and the Issuer, a Bond Ordinance duly enacted by the Issuer on December 11, 1995, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 10, 1997 (collectively, the "Bond Legislation"), a Petition of the Board duly adopted November 13, 1995, and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). Capitalized terms used herein and not otherwise

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defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Board has been duly created and is validly existing and the members of the Board have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Board in their respective capacities.

2. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Loan Agreement and the Bond Legislation and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Board, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Board is a party or any existing law, regulation, court order or consent decree to which the Board is subject.

3. The Issuer has received all permits, licenses, approvals and authorizations necessary for the acquisition and construction of the Project and the operation of the System, including, without limitation, the receipt of the NPDES permit.

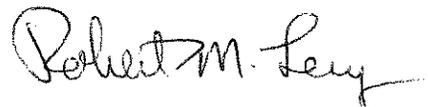
4. Except as stated below there is no action, suit, proceeding or investigation at law or in equity before or by any court, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues therefor. There is pending in the Circuit Court of Cabell County, West Virginia, Civil Action No. 96-C-470, entitled Huntington City Council vs. Huntington Sanitary Board, together with a companion case, Civil Action No. 97-C-194, entitled Huntington Sanitary Board vs. Huntington City Council. I am advised that the parties to these actions have reached an agreement as to the resolution in principle of the questions involved, which only awaits formal approval by Huntington City Council. I do not anticipate any financial exchange on the part of either party, as part of this resolution in principle, and I further do not anticipate that either party will make an admission as to any of the issues described below as part of the resolution in principle. The issues before the Court are:

- a. Under the applicable state statutes, Charter and Ordinances of the City of Huntington, who has the power to appoint members to the Huntington Sanitary Board?
- b. Does Huntington City Council have the power to require approval by Council of the Sanitary Board's Budget?

- c. Is the approval of the City Council required in order for the Huntington Sanitary Board to make or otherwise enter into any contract or agreement the purpose of which is necessary or incidental to the execution of its powers and the performances of its duties with respect to the supervision and control of the construction, acquisition, improvement, operation and maintenance of its sewage system?
- d. Did the Huntington Sanitary Board fail to follow the procedures required by W.VA. Code 5G-1-3 in the procurement of engineering services for the Miller/Shockey Extension Project?

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

A handwritten signature in cursive script that reads "Robert M. Levy". The signature is written in black ink and is positioned above the typed name of the law firm.

Levy Trautwein & Pancake, L.C.

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November 25, 1997

The City of Huntington  
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

Huntington Sanitary Board  
Huntington, West Virginia

The City of Huntington  
Huntington, West Virginia

West Virginia Water  
Development Authority  
Charleston, West Virginia

West Virginia Division of  
Environmental Protection  
Charleston, West Virginia

Steptoe & Johnson  
Clarksburg, West Virginia

Ladies and Gentlemen:

I am Counsel to the Sanitary Board (the "Board") of The City of Huntington in Cabell and Wayne Counties, West Virginia (the "Issuer"), in connection with certain matters before the Public Service Commission of West Virginia. As such counsel, I am of the opinion that the Issuer has received all requisite orders and approvals from the Public Service Commission of West Virginia necessary for the issuance of bonds in an amount not to exceed \$3,600,000.00. The time for appeal of the Final Orders of the Public Service Commission of West Virginia entered on May 18, 1994, August 2, 1994, August 29, 1995, and May 24, 1996, in Case No. 93-1013-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project has expired prior to the date hereof without any appeal. Accordingly, no additional action is needed from the Public Service Commission of West Virginia for the issuance of the Bonds.

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Huntington Sanitary Board, et al.  
Page 2  
November 25, 1997

Pursuant to a Commission Order entered September 18, 1997, in Case No. 96-0354-S-C, there is pending a general investigation of the operations, finances, practices and procedures of the Board. However, nothing contained in the Commission's Order of September 18, 1997 suggests that the investigation would adversely affect the issuance of the Bonds or the repayment thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Sincerely,



Robert R. Rodecker

RRR/bg



**LEVY, TRAUTWEIN & PANCAKE, L.C.**  
ATTORNEYS AT LAW  
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JOE N. PATTON (1827-1074)

TELEPHONE  
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August 11, 1997

**VIA FACSIMILE**

State Revolving Fund of West Virginia  
Charleston, West Virginia

**RE: Huntington Sanitary Board SRF Loan Application  
Inwood Drive/Miller Road Sanitary Sewer Line Extension Project**

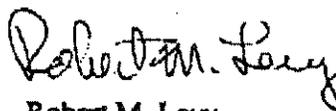
Gentlemen:

I am an attorney at law, duly licensed to practice law in the State of West Virginia, and I am General Counsel for the Huntington Sanitary Board, Huntington, West Virginia.

I do hereby certify that, pursuant to the scope of work and information provided for this project by Chester Engineers, the Board's design, consulting and supervising engineers for the above project, that all temporary and permanent easements necessary for the construction of the main collection system for the project has been obtained and have been or are being recorded in the office of the Clerk of the County Commission of Cabell County, West Virginia, in the appropriate records therein. I do further certify, accordingly, that all easements necessary for the installation and maintenance of grinder pumps required for the above project, as certified by Chester Engineers, have been obtained and have been or are being recorded in said Clerk's Office, for those properties on which grinder pumps have been installed, which, pursuant to such information from Chester Engineers, includes all but seven (7) properties within said project area, on which grinder pumps are not now being installed, and will not be installed until appropriate easements or agreements have been obtained and so recorded.

I am further of the opinion that the easement form utilized for the above vest good and adequate title in the City of Huntington, for such intended use by the Huntington Sanitary Board.

Very truly yours,

  
Robert M. Levy

RML:kd



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDER
16. PRIVATE USE OF FACILITIES
17. NO FEDERAL GUARANTY
18. IRS INFORMATION RETURN
19. SPECIMEN BOND
20. CONFLICT OF INTEREST
21. CLEAN WATER ACT

We, the undersigned MAYOR AND CITY CLERK of The City of Huntington in Cabell and Wayne Counties, West Virginia (the "Issuer"), and the undersigned CITY ATTORNEY, hereby certify in connection with the \$3,039,895 principal amount of The City of Huntington Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), dated the date hereof (the "Bonds" or the "Series 1997 Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance of the Issuer duly enacted December 11, 1995, and the Supplemental Resolution duly adopted November 10, 1997 (collectively, the "Bond Legislation").

2. **NO LITIGATION:** Except as stated in the opinion of Ben Bryant, Esquire, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the pledge or application of moneys and security or the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement entered into among the Issuer, the DEP and the Authority. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are outstanding obligations of the Issuer which will rank on parity with the Series 1997 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds" or "Prior Bonds"), dated November 1, 1993, issued in the original aggregate principal amount of \$7,100,000, pursuant to an ordinance enacted by the Issuer on October 12, 1993, as supplemented by the supplemental resolution of the Issuer adopted November 3, 1993 (collectively, the "Prior Ordinance").

The Issuer has met the parity test requirements of the Prior Bonds and the Prior Ordinance, and the Series 1997 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1997 Bonds as to liens, pledge and/or source of and security for payment and in all other respects.

5. **CERTIFICATION OF COPIES OF DOCUMENTS:** The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

**Bond Ordinance**

**Bond Ordinance (Conformed Copy)**

**Supplemental Resolution**

**Loan Agreement**

**Public Service Commission Orders**

**City Charter**

**City Council Rules and Regulations**

**Oaths of Office of City Officers and Councilmembers**

**Ordinance Creating Sanitary Board**

**Petition of Sanitary Board**

**Sewer Rate Ordinance**

**Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing**

**Minutes on Adoption and Enactment of Sewer Rate Ordinance**

**Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing**

**Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution**

**1993 Bond Ordinance and Supplemental Resolution**

**NPDES Permit**

6. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is "The City of Huntington." The Issuer is a municipal corporation in Cabell and Wayne Counties and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Council, consisting of a Mayor and 11 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Jean Dean	- Mayor	July 1, 1997	December 31, 2000
Robert Bailey	- Councilmember	July 1, 1997	December 31, 2000
A. F. Bobersky	- Councilmember	July 1, 1997	December 31, 2000
Philip E. Cline	- Councilmember	July 1, 1997	December 31, 2000
B. W. Ellis	- Councilmember	July 1, 1997	December 31, 2000
Frances Jackson	- Councilmember	July 1, 1997	December 31, 2000
Calvin Kent	- Councilmember	July 1, 1997	December 31, 2000
Renee Maass	- Councilmember	July 1, 1997	December 31, 2000
Mary Neely	- Councilmember	July 1, 1997	December 31, 2000
Larry D. Patterson	- Councilmember	July 1, 1997	December 31, 2000
Chuck Polan	- Councilmember	July 1, 1997	December 31, 2000
James Ritter	- Councilmember	July 1, 1997	December 31, 2000

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman	-	Jean Dean
Member	-	Bruce Churton, P.E.

The duly appointed and acting City Clerk of the Issuer is Ann C. Shaye. The duly appointed and acting City Attorney is Jendonnae L. Houdyschell.

7. **LAND AND RIGHTS-OF-WAY:** All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired

by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

8. **MEETINGS, ETC.:** All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A, of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. **CONTRACTORS' INSURANCE, ETC.:** All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation is in full force and effect.

10. **LOAN AGREEMENT:** As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

11. **RATES:** The Issuer has duly enacted a sewer rate ordinance on July 23, 1984, setting rates and charges for the services of the System. The time for appeal of such sewer rate ordinance has expired prior to the date hereof without any appeal, and such rates are currently in effect.

12. **SIGNATURES AND DELIVERY:** On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by her manual signature, and the undersigned City Clerk did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. **BOND PROCEEDS:** On the date hereof, the Issuer received \$3,039,895 from the Authority and the DEP, being the entire principal amount of the Bonds.

14. **PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE:** Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in *The Herald Dispatch*, a newspaper published and of general circulation in The City of Huntington, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 11th day of December, 1995, at 7:30 p.m., at the Huntington City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

15. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the Final Orders of the Public Service Commission of West Virginia entered on May 18, 1994, August 2, 1994, and May 24, 1996, in Case No. 93-1013-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Final Orders has expired prior to the date hereof without any appeal.

16. **PRIVATE USE OF FACILITIES:** The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or

to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

17. **NO FEDERAL GUARANTY:** The Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

18. **IRS INFORMATION RETURN:** On the date hereof, the undersigned Mayor did officially execute a properly completed IRS Form 8038-G in connection with the Bonds and will cause such executed IRS Form 8038-G to be filed in a timely manner pursuant to Section 149(e) of the Code with the Internal Revenue Service Center, Philadelphia, Pennsylvania. The information contained in such executed Form 8038-G is true, correct and complete.

19. **SPECIMEN BOND:** Delivered concurrently herewith is a true and accurate specimen of the Bond.

20. **CONFLICT OF INTEREST:** No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

21. **CLEAN WATER ACT:** The Project as described in the Bond Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

WITNESS our signatures and the official seal of THE CITY OF HUNTINGTON on this 25th day of November, 1997.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Jean Alan

Mayor

Ben C. Sharpe

City Clerk

Judith L. Henderson

City Attorney

11/10/97  
435500/94001



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

CERTIFICATE AS TO ARBITRAGE

The undersigned Mayor of The City of Huntington in Cabell and Wayne Counties, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of the \$3,039,895 Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), of the Issuer, dated the date hereof (the "Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986 and applicable regulations (the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances, and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the ordinance authorizing the Bonds duly enacted by the Issuer on December 11, 1995 (as supplemented, the "Bond Ordinance").

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its bonds or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on November 25, 1997, the date on which the Bonds are to be physically delivered in exchange for more than a de minimis amount of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Bonds were sold on November 25, 1997, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated October 17, 1997, by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection (the "DEP") for an aggregate purchase price of \$3,039,895 (100%

of par), at which time, the Issuer received the entire principal amount of the Bonds from the Authority. No accrued interest has been or will be paid on the Bonds.

6. The Issuer has covenanted in the Bond Ordinance not to take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted not to intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Bond Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding a reserve account for the Bonds; and (iii) paying costs of issuance and related costs thereof.

8. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend in excess of \$100,000 on the Project, constituting a substantial binding commitment. Acquisition, construction and equipping of the Project shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest (if any) and proceeds deposited in the Reserve Account for the Bonds (if any), all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before November, 1997. The construction of the Project has been completed.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at \$3,039,895. Sources and uses of funds for the Project are as follows:

**SOURCES**

Gross Proceeds of the Bonds	<u>\$3,039,895</u>
Total Sources	<u>\$3,039,895</u>

**USES**

Costs of Acquisition and Construction of the Project	\$2,822,261
Capitalized Interest	-0-
Fund Reserve Account	177,634
Costs of Issuance	<u>40,000</u>
Total Uses	<u>\$3,039,895</u>

The amount of the costs of the Project is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1(c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created (or continued if previously established by the Prior Ordinances):

- (1) Revenue Fund;
- (2) Depreciation Fund;
- (3) Bond Construction Trust Fund;
- (4) Series 1993 Bonds Sinking Fund;
- (5) Within the Series 1993 Bonds Sinking Fund, the Series 1993 Bonds Reserve Account and the Series 1993 Bonds Redemption Account;
- (6) Series 1997 Bonds Sinking Fund; and

- (7) Within the Series 1997 Bonds Sinking Fund, the Series 1997 Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

- (1) Series 1997 Bonds proceeds in the amount of \$-0- will be deposited in the Series 1997 Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Bonds during acquisition and construction of the Project and for not more than six months thereafter.

- (2) Series 1997 Bonds proceeds in the amount of \$177,634 will be deposited in the Series 1997 Bonds Reserve Account.

- (3) The balance of the proceeds of the Series 1997 Bonds will be deposited in the Bond Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 1997 Bonds and related costs.

Amounts in the Bond Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years, except as otherwise set forth herein. All of such moneys are necessary for such purpose.

12. Moneys held in the Series 1997 Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 1997 Bonds Sinking Fund and Series 1997 Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Bond Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 1997 Bonds Sinking Fund and the Series 1997 Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan producing a

yield in excess of the yield on the Bonds have been or will be pledged to payment of the Bonds. Less than 10% of the moneys received from the sale of the Bonds, if any, will be deposited in the Series 1997 Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 1997 Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Bonds and will not exceed 125% of average annual principal of and interest on the Bonds. Amounts in the Series 1997 Bonds Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 1997 Bonds Reserve Account is required by the Authority, is vital to its purchase of the Bonds, and is reasonably required to assure payments of debt service on the Bonds.

Because amounts in the Renewal and Replacement Fund may be expended for other purposes, there is no reasonable assurance that any such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation.

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Bonds or \$100,000.

15. Work with respect to the acquisition and construction of the Project has proceeded with due diligence to completion. The Project has been completed.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

17. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Authority.

18. With the exception of the amount deposited in the Series 1997 Bonds Sinking Fund for payment of interest on the Bonds, if any, and the amount deposited in the Series 1997 Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 1 month from the date of issuance thereof.

19. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

20. The Series 1997 Bonds Sinking Fund (other than the Series 1997 Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of

debt service on the Bonds each year. The Series 1997 Bonds Sinking Fund (other than the Series 1997 Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Bonds, or 1 year's interest earnings on the Series 1997 Bonds Sinking Fund (other than the Series 1997 Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 1997 Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 1997 Bonds Reserve Account therein), will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 1997 Bonds Sinking Fund (other than in the Series 1997 Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

21. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

22. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

23. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

24. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

25. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

26. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

27. The Bonds are not and will not be, in whole or in part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

28. The Issuer is a governmental unit and has general taxing powers; no Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be

used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the aggregate face amount of all tax-exempt bonds or obligations (other than private activity bonds) issued by the Issuer during the calendar year 1997, the calendar year in which the Bonds are issued, is not reasonably expected to exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code. For purposes of this paragraph and for purposes of applying such Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer. No portion of the Bonds is issued to refund other obligations.

29. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

30. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

31. The Issuer has either (a) funded the Series 1997 Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 1997 Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 1997 Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 1997 Bonds Reserve Account and the Series 1997 Bonds Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

32. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

33. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

34. The transactions contemplated herein do not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

35. The Issuer will rebate to the United States the amount, if any, required by the Code and will take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

36. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

37. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

38. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

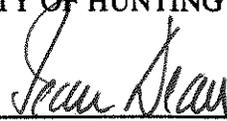
39. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

40. Steptoe & Johnson is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

41. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature on this 25th day of November, 1997.

THE CITY OF HUNTINGTON

A handwritten signature in cursive script, appearing to read "Sam Dean", written over a horizontal line.

Mayor

11/10/97  
435500/94001



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

CERTIFICATE OF ENGINEER

I, Joseph G. Menniti, Registered Professional Engineer, West Virginia License No. 8832, of Chester Engineers, Inc., Huntington, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of The City of Huntington (the "Issuer") to be constructed primarily in Cabell County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance enacted by the Issuer on December 11, 1995, as supplemented by the Supplemental Resolution adopted by the Issuer on November 10, 1997, and the Loan Agreement, by and among the Issuer, the West Virginia Division of Environmental Protection (the "DEP"), and the West Virginia Water Development Authority (the "Authority"), dated October 17, 1997.

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; (ii) funding a reserve account for the Bonds; and (iii) paying costs of issuance and related costs.

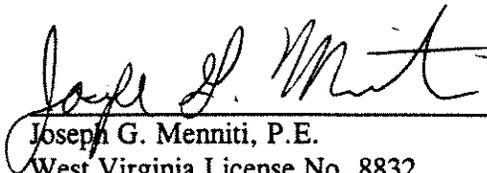
3. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the DEP and the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least 20 years, (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project, (v) the rates and charges for the System as adopted by the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and

irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature and seal on this 25th day of November, 1997.

CHESTER ENGINEERS, INC.

(SEAL)

  
\_\_\_\_\_  
Joseph G. Menniti, P.E.  
West Virginia License No. 8832

10/23/97  
435500/94001

**SCHEDULE A**

NAME OF GOVERNMENTAL AGENCY: City of Huntington

**ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS  
AND COST OF FINANCING**

(Revised 10/28/97)

**A. Cost of Project**

1. Construction	\$	2,784,158	
2. Technical Services	\$	0	
3. Legal and Fiscal	\$	38,103	
4. Administrative	\$		
5. Site and Other Lands*	\$		
6. Step I and/or Step II (Design) or Other Loan Repayment (Specify Type: _____)	\$		
7. Interim Financing Costs	\$		
8. Contingency	\$		
9. Total of Lines 1 Through 8	\$	2,822,261	\$ 2,822,261

**B. Sources of Funds**

10. Federal Grants: (Specify Sources) _____	\$		
11. State Grants: (Specify Sources) _____	\$		
_____	\$		
_____	\$		
12. Other Grants: (Specify Sources) _____	\$		
_____	\$		
13. Any Other Source (Specify) _____	\$		
_____	\$		
14. Total of Lines 10 Through 13			\$ 0
15. Net Proceeds Required from Bond Issue (Line 9 Less than 14)			\$ 2,822,261

**C. Cost of Financing**

16. Capitalized Interest (Construction period plus six months)	\$	0	
17. Funded Reserve Account:	\$	177,634	
18. Other Costs: Bond Counsel	\$	40,000	
_____	\$		
19. Total Cost of Financing (lines 16 through 18)			217,634
20. Size of Bond Issue (Line 15 plus Line 19)			3,039,895

\* not allowable for State Revolving Fund Assistance





**HAYFLICH & STEINBERG**

*Certified Public Accountants*

November 25, 1997

The City of Huntington  
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

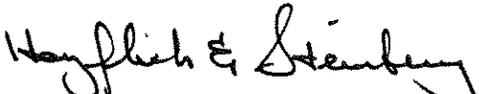
West Virginia Water Development  
Authority  
Dunbar, West Virginia

West Virginia Division of  
Environmental Protection  
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the sewer rate ordinance of The City of Huntington (the "Issuer"), enacted July 23, 1984, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by the Issuer, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system of the Issuer (the "System"), will pay all repair, operation and maintenance expenses of the System and leave a balance each year equal to at least 120% of the maximum amount required in any year for debt service on the Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program) (the "Bonds"), and all other obligations secured by or payable from revenues of the System prior to or on a parity with or junior to the Bonds, including the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993 (the "Prior Bonds"). It is our further opinion that the Net Revenues actually derived from the System during the fiscal year preceding the date of the actual issuance of the Bonds, plus the increased annual Net Revenues expected to be received after the date of issuance of the Bonds, shall not be less than 120% of the maximum annual debt service on the Prior Bonds and the Bonds.

Very truly yours,

  
HAYFLICH & STEINBERG, CPAs A.C.

**HUNTINGTON SANITARY BOARD**  
**1997 SRF BOND - MAXIMUM DEBT SERVICE COMPUTATION**

03-Nov-97

Maximum Annual Debt Service:

1993 Bond	\$708,648
1997 Bond	<u>177,634</u>
	<u>886,282</u>

Computation in Support of Accountant's Certificate:  
 (120% of Maximum Annual Debt Service of 1997 and  
 1993 Bonds based on F'97-98 Budget and F'97  
 Actual Results)

	<u>F'97</u> <u>Actual</u>	<u>97-98</u> <u>Budget</u>
<u>Operating Revenue</u>		
Sewer Service Charge (Net)	\$4,312,372	\$4,428,878
<u>Operating Expenses</u>	<u>3,422,215</u>	<u>3,591,001</u>
Net Operating Revenues	890,157	837,877
<u>Other Income</u>		
Interest earned	312,669	190,000
Miscellaneous	<u>50,786</u>	<u>41,400</u>
<u>Total Other Income</u>	<u>363,455</u>	<u>231,400</u>
<u>Net Revenues</u>	1,253,612	1,069,277
<u>Maximum Debt Service</u>	<u>886,282</u>	<u>886,282</u>
<u>Debt Coverage</u>	<u>\$367,330</u>	<u>\$182,995</u>
<u>120% of Maximum Annual</u> <u>Debt Service</u>	<u>141.4462%</u>	<u>120.6475%</u>



CHARTER  
of the  
CITY OF HUNTINGTON  
WEST VIRGINIA

\*\*\*\*\*

Prepared by the  
HUNTINGTON CHARTER BOARD and  
Revised at the Municipal General Election, June 1, 1993  
and the Special Municipal Election, November 5, 1996

PROPOSED CHARTER  
of the  
CITY OF HUNTINGTON

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CONTENTS

ARTICLE

- ONE: Incorporation; Form of Government; Powers
- TWO: Mayor
- THREE: Council
- FOUR: City Attorney
- FIVE: Municipal Court
- SIX: Taxation
- SEVEN: Department of Public Works
- EIGHT: Planning and Zoning
- NINE: Department of Administration and Finance
- TEN: Budget and Financial Procedures
- ELEVEN: Nominations and Elections
- TWELVE: Initiative, Referendum and Recall
- THIRTEEN: Succession in Government
- FOURTEEN: General Provisions
- APPENDIX "A": Election Districts

CHARTER  
OF THE  
CITY OF HUNTINGTON

\*\*\*\*\*

ARTICLE ONE  
INCORPORATION; FORM OF GOVERNMENT; POWERS

SECTION 1.1: INCORPORATION

The inhabitants of the City of Huntington, West Virginia, within the corporate limits as now established or as hereafter established, shall continue to be a municipal corporation under the name of "The City of Huntington" and in the manner provided by law.

SECTION 1.2: FORM OF GOVERNMENT

The municipal government provided by this Charter shall be the "strong-mayor plan." All powers of the City shall be exercised in the manner prescribed by this Charter or by general law.

SECTION 1.3: POWERS OF CITY

This City, incorporated under this Charter, shall have all the powers granted to municipal corporations and to cities of its class by the constitution and laws of the State of West Virginia, together with all the implied powers necessary to carry into execution all powers granted.

SECTION 1.4: CONSTRUCTION

The powers of the City under this Charter shall be construed liberally in favor of the City and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general power stated in this Article.

ARTICLE TWO  
MAYOR

SECTION 2.1: POWERS AND DUTIES OF MAYOR

The Mayor shall be the chief executive officer of the City and shall exercise all powers and perform all duties vested in or imposed upon him or her by this Charter, ordinance, general law or rule necessarily implied therefrom in order to carry out the functions of his or her office. The Mayor shall exercise directly, or through his or her authorized and duly appointed representatives, supervision over all executive and administrative work of the City. The Mayor shall report to Council, at least annually, upon the state of the City and may recommend to Council such measures as he or she deems to be in the best interests of the City and its inhabitants. The Mayor shall appoint City officers and employees as provided by law, this Charter or ordinance and may, except where prohibited or otherwise provided by general law, this Charter, ordinance or any duly adopted merit or civil service systems, remove any City officer or employee at his or her pleasure, whether such officer or employee was appointed by the Mayor with or without the approval of Council. Except as otherwise provided by general law, the Mayor shall appoint members of independent boards, agencies or commissions, which appointments shall be subject to the approval of Council; provided, however, no individual shall be eligible for reappointment to any such board, agency, or commission who has previously served three full and consecutive terms on such board, agency or commission unless a period of time equal to a full term thereon shall have passed since the expiration of said individual's last previous term of office.

SECTION 2.2: ELECTION AND TERM OF MAYOR

The qualified electors of the City shall elect the Mayor from the City at large in the manner provided in Article Eleven of this Charter, to serve for a term of four years. No person who shall have previously been elected for three full and consecutive terms as Mayor shall be eligible to succeed himself or herself in that office and the Mayor shall not, during his or her term of office, hold any other public office or position, be a member of any political executive committee.

\* Amended by ordinance 9/13/93 (Further amended, 1996 General Election Cabell County; effective January 1, 1997)

SECTION 2.3: QUALIFICATIONS OF MAYOR

Prior to his or her election, the Mayor shall be a citizen of the United States and the State of West Virginia, and shall be a resident and qualified elector of the City.

He or she shall be at least twenty-five years of age at the time of his or her election and shall remain a resident of the City during his or her term or terms of office.

#### SECTION 2.4: ACTING MAYOR

In case of the Mayor's temporary absence, he or she shall designate, by order delivered to the City Clerk prior to Council, to serve as Acting Mayor; provided that, in the event the Mayor fails to so designate an Acting Mayor, the Director of the Department of Administration and Finance shall serve as Acting Mayor.

#### SECTION 2.5: VACANCY IN OFFICE

A vacancy in the office of Mayor, occurring for any reason, shall be filled in the same manner as that provided for filling vacancies in Council as set out in Section 3.13 of this Charter; except Council shall not select a member of Council to fill a vacancy and in the event Council should fail to fill a vacancy within thirty days after its occurrence, the members of Council shall receive no further compensation until such vacancy shall have been filled and no funds shall issue for such compensation which would ordinarily have accrued during the period of noncompliance.

#### SECTION 2.6: COMPENSATION

The Mayor shall be compensated at the rate of Fifty-Five Thousand Six Hundred Dollars per annum. Council may, by ordinance, change the salary of the Mayor, but no ordinance shall be effective to reduce or increase the Mayor's salary during his or her current term of office.

#### SECTION 2.7: SUBMISSION OF ORDINANCES TO MAYOR; VETO POWER

Within ninety-six hours after the adjournment of any Council meeting, the City Clerk shall present to the Mayor the record of proceedings of the meeting and all ordinances and resolutions adopted at the meeting. The Mayor, within seven days of receipt by him or her of an ordinance or resolution, shall return it to the City Clerk with his or her approval signature, with his or her written veto, or the Mayor may not act. If the ordinance or resolution is signed by the Mayor, it shall become operative as specified in the ordinance. If the ordinance is disapproved by veto, the Mayor shall attach thereto a written statement explaining the reasons for his or her veto. If the Mayor does not act, the ordinance or resolution shall become operative at noon on the seventh calendar day after it is received by the Mayor. Ordinances or resolutions vetoed by the Mayor shall be presented by the City Clerk to Council for its

consideration at its next regular meeting and should Council then or thereafter adopt the ordinance or resolution by an affirmative vote of at least two-thirds of all its members, it shall be operative upon the date specified by Council, but in no event less than fifteen days after the date of final passage. If no operative date is so specified, it shall become operative at noon on the fifteenth calendar day after the date of final passage. The Mayor's veto power shall extend to disapproving or reducing any individual appropriation item in the budget or any ordinance or resolution, but shall not extend or apply to any appropriation or resolution authorized pursuant to Section 3.16 of this Charter.

#### SECTION 2.8: MAYOR SHALL ATTEND COUNCIL MEETINGS

The Mayor shall attend every meeting of Council, may attend any meeting of its committees and may express his or her views, orally or in writing, on matters pending before Council. The Mayor shall have no right to introduce any motion, resolution, ordinance or amendment thereto, nor to vote on questions before Council. Provisions of Section 3.13 and 14.17 pertaining to attendance at meetings shall apply to the Mayor. (Adopted, 1993 Municipal Election; effective date: July 1, 1993)

### ARTICLE THREE COUNCIL

#### SECTION 3.1: POWERS

All legislative powers of the City shall be vested in Council which shall be the governing body of the City.

#### SECTION 3.2: NUMBER, SELECTION AND TERMS

The City shall have a Council consisting of eleven members. Eleven council members shall be elected, one from each of the nine municipal election districts hereinafter described and two members elected at-large. Each of the nine district Council members shall be elected by the qualified electors residing in the particular district from which he or she is to be elected, to serve for a term of four years. Each at-large Council member shall be elected by the qualified electors residing in the entire City for a term of four years. However, no more than one at-large Council member shall be a resident of any one municipal election district at the time of his or her election. In no case shall any member of Council serve more than three full and consecutive terms as a Council member. All elections for members of Council shall be conducted according to the provisions set forth in Article Eleven of this Charter. \* Amended by ordinance 9/13/93 (Further amended, 1996 General Election Cabell County; effective January 1, 1997)

SECTION 3.3: MUNICIPAL ELECTION DISTRICTS DEFINED

The City shall be divided into nine municipal election districts as the basis for electing district Council members. The boundaries, population and designation of the nine initial council districts are specified in Appendix "A" of this Charter and shall remain in effect until changed in accordance with provisions set forth in Section 3.5 of this Charter.

SECTION 3.4: MUNICIPAL ELECTION PRECINCTS DEFINED

The municipal election precincts contained in the municipal election districts referred to in Section 3.3 of this Charter shall mean the voting precincts as they lie within the corporate limits of the City of Huntington fixed by reference to and in accordance with the division of Cabell County into precincts by Order of the County Commission of Cabell County, West Virginia, in effect for all State and County elections on the effective date of this Charter and fixed by reference to and in accordance with the division of that portion of Wayne County lying within the corporate limits of the City of Huntington into precincts by Order of the County Commission of Wayne County, West Virginia, in effect for all State and County elections on the effective date of this Charter. Within three months after their election and qualification, the members of the first Council elected under this Charter shall cause to be made and kept a detailed map of the City showing the boundaries of the municipal election districts and precincts described in Section 3.3 and 3.4 of this Charter and each subsequent Council shall cause such map to be kept, maintained and revised as appropriate. The initial such map and any revised such map shall be approved and promulgated by Council in the same manner as provided for the adoption of ordinances.

SECTION 3.5: COUNCIL REDISTRICTING

It shall be the duty of Council to redistrict the City, by Ordinance, within a period of six months after the official publication by the United States Bureau of the Census of the population of the area embraced by the City as revealed in such official census. Each municipal election district shall be made to contain as nearly as practicable, consistent with general law, an equal number of municipal residents and an equal number of qualified electors of the City as determined from the registered voters at the last general municipal election. In addition, Council shall not create or establish a municipal election district that is not compact and contiguous and in compliance with Chapter 3, Article 1 Section 6 of the Official Code of West Virginia. In no case shall Council fail to pass a redistricting ordinance, if necessitated by the provisions of this Charter later than six months preceding the primary election or any regular election.

in which a seat on Council is at stake. If, at the commencement of the six month period prior to such election, Council shall have failed to redistrict the City as herein required, the members of Council shall forfeit all further compensation until such ordinance shall have been lawfully adopted; and no funds shall issue for such compensation which would ordinarily have accrued during the period of noncompliance. Within the limits established above, Council may redistrict the City by ordinance at any more frequent intervals it may deem appropriate based upon any other more timely information that may become available.

### SECTION 3.6: QUALIFICATIONS

Prior to his or her election, all members of Council shall be citizens of the United States and the State of West Virginia, shall be a qualified elector and resident of the City and of his or her respective district and shall, during his or her term of office remain a resident of the district from which he or she is elected or has been appointed to represent; provided, however, no redistricting of the City shall affect the term of any Council member during his or her then existing term of office. A Council member shall not, during his or her term of office, hold any other public office, be a member of any political executive committee nor be an employee of the City.

### SECTION 3.7: ORGANIZATION OF COUNCIL; OFFICERS; RULES; EMPLOYEES; MEETINGS

Council shall meet in the Council chambers at City Hall for organization at 7:30 p.m. local time on the Monday next following the date its members assume office, at which time it shall elect one of its members as Chairperson and one of its other members as Vice-Chairperson, both of whom shall serve at the will and pleasure of Council. The Chairperson shall be the presiding officer and shall, together with all other Council members, have the right to vote in Council. In the event of the Chairperson's absence, disability, or disqualification to act, the Vice-Chairperson shall act as Chairperson. A majority of the total number of Council members shall constitute a quorum for any purpose not requiring more than a majority vote of Council. Council shall determine and adopt its own rules governing its officers and employees, for the organization of committees and respecting the transaction of its business; except that, whenever in the conduct of any business of Council, a vote is required by Council, all members present shall vote on the issue, question, motion, resolution or other business and no vote of abstention, disqualification, pass or other similar such vote shall be permitted except as provided by Charter or general

law. Council shall meet regularly on the second and fourth Monday of each month at 7:30 p.m. local time in the Council Chambers at City Hall, excepting only when a regularly scheduled Council meeting shall occur on a legal holiday. Council shall, in that event, meet at such time as prescribed by Section 14.8 of this Charter, but not less frequently than herein prescribed. Special meetings may be called at any time, upon reasonable notice by the Mayor or the Chairperson of Council, and shall be so called by the Chairperson upon the request of a majority of all members of Council. The requirement of reasonable notice, may be satisfied by delivering to each member of Council a written notice of the time, place and purpose of the special meeting in the method provided by law for the service of process in a civil action at least twelve hours prior to the time set for the meeting or by such other method as Council may by ordinance provide. No other meetings of Council, except as herein provided, shall qualify for any purpose under this Charter. Council may designate the City Auditorium, or such other appropriate and convenient location, as the Council Chambers for purposes of conducting its regular meetings and any special meetings that may be called pursuant to the provisions herein. (Amended by ordinance, 2/26/93)

#### SECTION 3.8: CITY CLERK

Council shall appoint a City Clerk who shall give notice of its meetings, keep the journal of its proceedings, authenticate by his or her signature and record in full, in a book kept for the purpose, all ordinances and resolutions and perform such other duties as may be required by this Charter, Council, or general law. The City Clerk shall serve at the will and pleasure of Council.

#### SECTION 3.9: ORDINANCES; PROCEDURE

Every act of Council which is to become law shall be by ordinance. Prior to the enactment of any ordinance, the Council shall cause notice of the proposed adoption of said ordinance to be published as a Class I-O legal advertisement in compliance with the provisions of general law; the notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time and place of the proposed final vote on the adoption of the ordinance, and the place or places within the City where such proposed ordinance may be inspected by the public. A reasonable number of copies of the ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept in the office of the City Clerk and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance. All other procedures for enacting ordinances shall be performed in the manner provided in Chapter 8, Article 11 of the West Virginia Code. (Adopted, 1993 Municipal Election; effective date: July 1, 1993)

### SECTION 3.10: COUNCIL MEETINGS TO BE PUBLIC

The meetings of Council shall be open to the public; provided, however, Council may hold a closed, executive session, for the purpose of discussing any matter authorized by law; and also provided the procedure used to hold such executive session conforms to the requirements of Chapter 6, Article 9A of the Official Code of West Virginia, together with any other applicable law.

### SECTION 3.11: COUNCIL TO BE JUDGE OF QUALIFICATIONS OF MEMBERS

Council shall be the judge of the election and qualification of its members, consistent with the provisions of this Charter and general law, and for such purpose Council shall have power to subpoena witnesses and require production of records.

### SECTION 3.12: CREATION OF DEPARTMENTS OR OFFICES; CHANGE IN DUTIES

Council may create, change or abolish offices, departments, divisions, boards or agencies, other than the offices, departments, divisions, boards and agencies created by this Charter. Either Council or the Mayor may assign additional functions or duties to offices, departments, divisions, boards or agencies established by Council or by this Charter, but the Mayor may not discontinue such duties or functions without the approval of Council. Neither the Mayor nor Council shall discontinue or reassign to any other office, department, division, board or agency any function or duty assigned by this Charter to a particular office, department, division, board or agency.

### SECTION 3.13: VACANCIES IN COUNCIL

If a Council member absents himself or herself from forty or more percent of the meetings scheduled in accordance with Section 3.7 herein in any twelve month period, ceases to possess any of the qualifications required by this Charter, becomes physically or mentally incapacitated to the extent that he or she is unable to properly perform the functions of the office or is convicted of a felony or any crime involving moral turpitude, he or she shall be disqualified from holding the office of Council member and such office shall thereby become vacant and shall be so declared by Council forthwith. Any Council member may be removed from office under the provisions of general law. If a Council member absents himself or herself from forty or more percent of Council meetings as provided herein, such absence shall, ipso facto, constitute neglect of duty. If a vacancy on Council shall occur as aforesaid or by reason of death, resignation, removal or other cause, such vacancy shall be filled as follows: The

remaining members of Council shall select a citizen with requisite qualification by a majority vote of its remaining members at a meeting held not less than fifteen nor more than thirty days following the declaration of such vacancy, who shall be a resident of the same district as that in which the Council member resided whose seat was vacated. The person so appointed shall hold office for the unexpired term or until his or her successor has been duly elected and qualified. In the event Council shall fail to choose a qualified successor, as provided herein, the Mayor shall appoint a person with the requisite qualifications to fill the vacancy for the unexpired term or until his or her successor has been elected and qualified.(Amended by Ordinance 5/8/89)

#### SECTION 3.14: COMPENSATION

Each member of Council shall receive the sum of Two Hundred Fifty Dollars for each Council meeting scheduled and attended pursuant to Section 3.7 herein; provided, however, the annual compensation of any Council member shall, in no event, exceed the sum of Six Thousand Dollars per annum. Council shall, by ordinance, address itself to the issue of compensation for the Mayor and Council members at least once every four fiscal years, commencing with action by Council prior to the fiscal year ending June 30, 1988, and the resulting ordinance shall not become effective for one year from its adoption. Thereafter, Council shall address and so act upon the issue by the end of each fourth fiscal year. If Council should fail to act on the issue within the time prescribed herein, the members of Council shall receive no further compensation until such ordinance shall have been adopted and no funds shall issue for such compensation which would ordinarily have accrued during the period of noncompliance. In no case shall any change in the salary of Council members or of the Mayor become effective during the current term of any Council member or Mayor. In no event shall any Council member receive compensation for any meeting which he or she did not attend.

#### SECTION 3.15: CODIFICATION OF ORDINANCES

Council shall, within five years of the effective date of this Charter and at least every eight years thereafter, cause to be prepared a Code with an adequate index containing all ordinances of general application which are appropriate for continuation as law. Such Code may be prepared by the City Attorney or Council may contract for its preparation by professional persons or by organizations experienced in the revision and codification of ordinances or statutes. When the Code, or any general revision thereof, shall have been prepared, Council shall cause copies of the same to be prepared and made available for

public distribution. No ordinance approving such Code or revision shall be adopted until ninety days have elapsed following the date on which Council shall have noted in its official journal the availability of copies of such proposed Code to the public nor until compliance with all applicable law. The Code and general revisions thereof need not be printed in the official journal, but Council shall cause the Code and revisions to be published and distributed to the public at such reasonable price as may be established. All ordinances of general application, adopted after the approval of the Code, shall be adopted as amendments to the Code, shall indicate the section numbers to be assigned to the text of such ordinance in the Code and shall be indexed accordingly therein. Until such Code is prepared, adopted and distributed, the City Clerk shall make available to any person requesting it, at a cost to be fixed by Council, copies of all presently effective City ordinances and all ordinances which may be subsequently adopted.

#### SECTION 3.16: INVESTIGATION; POWERS TO CONDUCT

Council shall have power to conduct investigations of the operation of any office, department, division, agency or board administering the affairs of the City and of any subject upon which it may legislate. Council shall have power to administer oaths, subpoena witnesses and compel the production of records pertinent to any investigation conducted pursuant to this section of the Charter.

#### SECTION 3.17: IMPEACHMENT POWERS

Council shall have authority to initiate impeachment proceedings, by resolution, against the Mayor, member of Council or against any appointee of the Mayor, by a two-thirds vote of the members of Council. A three-fourths vote of the members of Council shall be required to convict any person so impeached. Conviction under this section shall be grounds for removal from office in accordance with the provisions of this Charter or general law. In the event an impeachment resolution is adopted by Council, as specified herein, it shall state with clarity and particularity each offense of which the person is accused, in terms sufficient to constitute due and proper notice to such person of the nature of the offense or offenses charged.

#### SECTION 3.18: APPROVAL OF APPOINTEES VETO POWER

Unless otherwise provided by general law, Council shall have power to veto, by a two-thirds vote of its members, any appointee designated by the Mayor to any office, department, or division provided for in this Charter, so long as such veto power is duly exercised within thirty days from receipt by

Council, of notice of the Mayor's designated appointee. If Council fails to act within the time period prescribed herein, such designated appointee shall be deemed approved by Council.

#### SECTION 3.19: EXECUTION AND ENFORCEMENT

Council shall hold the Mayor accountable for the execution and enforcement of those provisions of the Charter pertaining to the Mayor's non-discretionary duties. Alternate remedies failing, Council may on a majority vote of the entire Council require the Mayor to forfeit all further compensation until such provisions shall have been lawfully executed; and no funds shall issue for such compensation which would ordinarily have accrued during the period of noncompliance. (Adopted, 1993 Municipal Election; effective date: July 1, 1993)

### ARTICLE FOUR CITY ATTORNEY

#### SECTION 4.1: QUALIFICATIONS, SELECTION AND TENURE

There shall be a City Attorney who shall be an attorney licensed to practice law in the State of West Virginia, who shall have practiced therein for at least five years, he or she shall be a resident and qualified elector of the City and duly qualified to practice before the Circuit Courts of Cabell and Wayne Counties. The City Attorney shall be appointed by the Mayor with the approval of Council and may be removed by the Mayor only with the approval of Council. The City Attorney shall serve for a term not to extend beyond the term of the Mayor appointing him or her.

#### SECTION 4.2: POWERS AND DUTIES

The City Attorney shall perform all duties and exercise all powers which shall be imposed or conferred upon him or her by this Charter, Council, or the Mayor. Except as otherwise provided by law, he or she shall act as attorney for Council, the Mayor and municipal boards or commissions for which legal counsel has not otherwise been provided. At the direction of the Mayor, the City Attorney shall also act as attorney for any other municipal officer or employee in connection with the performance of his or her official duties. Upon request, he or she shall furnish Council, the Mayor and any municipal board or commission making a written request therefore a written opinion upon any question of law concerning or affecting the affairs of the City. Except where other legal counsel is provided as herein set out, the City

Attorney shall prosecute all actions for and defend all actions against the City; prosecute all cases brought before or appealed from the Municipal Court; and maintain and preserve as permanent records of the City Attorney's office all legal files, records and papers pertaining to the legal affairs of the City for which he or she is responsible. The City Attorney shall also conduct such investigations as he or she shall deem necessary concerning the facts in any litigation in which he or she acts as attorney for the City, the Mayor, the Council, any municipal board, agency or commission, or any municipal officer or employee. (Amended by Ordinance 5/8/89)

#### SECTION 4.3: ASSISTANT CITY ATTORNEYS

The City Attorney may recommend and the Mayor may employ one or more attorneys to assist the City Attorney in the discharge of his or her official duties. Such Assistant City Attorney or Attorneys shall possess the same qualifications, except as to the length of professional experience, as the City Attorney and under the direction and supervision of the City Attorney, shall assist the City Attorney in his or her duties.

#### SECTION 4.4: SPECIAL COUNSEL

Whenever the exigencies of the business of the City require, either the Mayor or the Council shall have power, within the limits of available budgeted funds, to employ special counsel to represent either the Mayor or the Council as the case may be in the performance of their respective official duties, or in the prosecution or defense of litigation in which the Mayor or the Council is involved. Such employment shall be governed by written agreement with the employed attorney, which agreement shall define the compensation to be paid, the work to be performed by the attorney, the term of employment, and the circumstances under which the agreement may be terminated by either party to the agreement. This section will not abrogate the rights of the City or its insurance carriers under the terms of any contract of insurance. (Amended by Ordinance 5/8/89)

ARTICLE FIVE  
MUNICIPAL COURT

SECTION 5.1: JURISDICTION

There shall be a Municipal Court which shall have criminal jurisdiction over violations of City ordinances, the criminal jurisdiction of a Magistrate of the State of West Virginia and such other jurisdiction, authorized by law.

SECTION 5.2: MUNICIPAL JUDGE, QUALIFICATIONS

The Judge of the Municipal Court shall be an attorney licensed to practice law in the State of West Virginia. He or she shall have practiced law in the State for at least five years, shall be a resident and qualified elector of the City and admitted to practice before the Circuit Courts of Cabell and Wayne Counties, West Virginia.

SECTION 5.3: METHOD OF SELECTION, TERM OF OFFICE

The Judge of the Municipal Court shall be appointed by the Mayor and shall serve at the will and pleasure of the Mayor for a term which shall not extend beyond the term of the Mayor appointing him or her.

SECTION 5.4: ACTING MUNICIPAL JUDGE

In the event of the temporary absence of the Municipal Judge, the Mayor shall serve as Acting Municipal Judge or shall appoint a person with the same qualifications required of the Municipal Judge, to serve as Acting Municipal Judge, during such absence.

SECTION 5.5: MUNICIPAL JUDGE, POWERS AND DUTIES

The Judge of the Municipal Court shall preside over the Municipal Court and, with respect to offenses over which the Municipal Court has jurisdiction, he or she shall have all the powers and duties which a Magistrate has with regard to violation of the criminal law of the State of West Virginia. The Municipal Judge shall have power to issue warrants, upon complaint under oath of any person or officer, for the arrest of anyone charged with any municipal offense within the jurisdiction of the Court or for search and seizure in connection with violation of a municipal ordinance.

The Municipal Judge shall try and determine all cases over which the Court has jurisdiction and, within the limits prescribed by ordinance or general law, shall have power to punish by fine, imprisonment or both. The Municipal Judge shall have power to summon persons or subpoena witnesses for the trial of any case before the Court, to compel the attendance of police officers of the City or to require the Chief of Police to enforce all judgments or orders entered by the Court in the exercise of its powers. In Municipal Court proceedings for the recovery of fines or for the enforcement of penalties fixed by ordinance or other law, the Court shall, so far as applicable, conform to the provisions of general law governing civil proceedings before a Magistrate of the State of West Virginia. The Municipal Judge shall have such other powers and duties as Council may by ordinance provide pursuant to general law.

#### SECTION 5.6: MUNICIPAL COURT, PROCESS

All warrants and other process and orders of the Municipal Court shall be signed by the Municipal Judge and may be directed to the Chief of Police, to be executed by him, her or by one of his or her subordinates at any place within the police jurisdiction of the City. The officer executing any such warrant, process or order shall have the same liability as a County Sheriff of the State of West Virginia in the performance of like duties or services.

#### SECTION 5.7: FINES AND FEES

All fines and fees received by the Municipal Court shall be paid over to the Department of Administration and Finance to be disposed of as prescribed by ordinance or general law.

### ARTICLE SIX TAXATION

#### SECTION 6.1: TAXING POWERS PRESERVED

The City shall have every power to tax, license, franchise and charge which it had immediately prior to the effective date of this Charter, including the powers given to it under the Official Code of West Virginia. The City shall continue to impose and collect every tax, license, franchise, fee and charge which is being imposed by the City immediately prior to the effective date of this Charter, until the same is revised, modified or repealed by Council.

## SECTION 6.2: CONSTRUCTION

The powers of the City under this Article shall be construed liberally in favor of the City and the specific mention of particular powers in this Article shall not be construed as limiting in any way the general power stated in this Article.

## ARTICLE SEVEN DEPARTMENT OF PUBLIC WORKS

### SECTION 7.1: DIRECTOR OF PUBLIC WORK: QUALIFICATIONS, SELECTION AND TENURE

There shall be a Department of Public Works the head of which shall be the Director of Public Works who shall be appointed by the Mayor and serve at the will and pleasure of the Mayor. The Director of Public Works shall be a person of proven executive and administrative ability, a professional engineer registered by the State of West Virginia and shall have experience and training in the field of municipal engineering.

### SECTION 7.2: POWERS AND DUTIES

Under the direction and control of the Mayor, the Director of Public Works shall, except as otherwise provided by general law: Supervise construction, repair and maintenance of all streets, alleys, sidewalks and other public ways; direct the operation, repair and maintenance of all municipal public works; and perform such other duties as may be required of him or her by this Charter, the Mayor or Council.

### SECTION 7.3: PERMITS AND INSPECTIONS

With the assistance of the City Engineer, as hereinafter provided, the Director of Public Works shall issue permits for and conduct inspections of buildings, construction, plumbing, electrical, elevator and other building installations.

#### SECTION 7.4: CITY ENGINEER, QUALIFICATIONS, SELECTION AND TENURE

Within the Department of Public Works, there may be a City Engineer who shall be appointed by the Mayor and serve at the will and pleasure of the Mayor. The City Engineer shall be a professional engineer registered by the State of West Virginia and shall have experience and training in the field of municipal engineering.

#### SECTION 7.5: POWERS AND DUTIES

The City Engineer shall: Act as engineering adviser to the Mayor, Council and municipal agencies, commissions and boards unless otherwise provided by law; provide engineering services for the City in the construction, purchase and maintenance of its facilities, public works and equipment, except such services for the City as are performed by independent contractors or assigned to other offices, departments or agencies of the City and to the extent that such services are performed by independent contractors, to inspect and certify, prior to acceptance thereof or payment therefore, the satisfactory performance of all work done for the City by independent contractors; supervise and regulate the issuance of permits for construction; supervise and regulate the inspection of buildings, construction, electrical, plumbing, elevator and other building installations; maintain and preserve, as custodian for the City, all records, plats, maps, specifications, and similar documents pertaining to the public works, property, improvements and streets of the City; and furnish upon request, at such fee as may be established by ordinance, certified copies, of any such material pertaining to the engineering affairs of the City for which he or she is responsible.

### ARTICLE EIGHT PLANNING AND ZONING

#### SECTION 8.1: PLANNING COMMISSION

There shall be a Huntington Planning Commission which shall consist of not less than five nor more than fifteen citizens all of whom shall be residents of the City. Council shall establish, by ordinance, the exact number which shall compose the Commission. The members of the Commission shall be appointed and possess the qualifications established by Chapter 8, Article 24, of the Official Code of West Virginia and shall hold their office for the terms prescribed by said law

## SECTION 8.2: POWERS AND DUTIES

The Commission established herein shall be governed by Chapter 8, Article 24, of the Official Code of West Virginia and shall have all powers and duties prescribed by said law, this Charter and ordinance in conformity therewith.

## SECTION 8.3: VACANCIES

A vacancy shall be deemed to exist on the Commission whenever any member shall die, resign, be removed, fail to meet the requirements of Section 14.17 of this Charter or cease to possess any other qualification required by this Charter or general law.

## SECTION 8.4: MEETINGS

The Commission shall meet at such times as prescribed by general law and by its rules, but not less frequently than once every other month. All meetings of the Commission at which any final action is taken shall be open to the public and the Commission shall provide by its rules a method whereby citizens of the City shall have a reasonable opportunity to be heard at any such meeting in regard to any matter then under consideration. A permanent written record of its resolutions, findings and determinations shall be maintained by the Commission and shall be available to the public upon request. A majority of the members of the Commission shall constitute a quorum for any purpose not requiring more than a majority vote.

## SECTION 8.5: DIRECTOR OF PLANNING, POWERS AND DUTIES

There may be a Director of Planning who shall be appointed by the Commission. The Director shall be qualified by special training and experience in the field of city planning. He or she shall provide technical advice to the Commission, may also be designated its executive secretary and shall perform such other duties as the Commission, Mayor or Council may direct.

#### SECTION 8.6: CONTINUITY OF PLANNING COMMISSION

The Planning Commission heretofore established shall continue to operate as though authorized under the terms of Chapter 8, Article 24, of the Official Code of West Virginia. All action lawfully taken prior to the adoption of this Charter is hereby validated and continued in effect until amended or repealed in the manner provided herein or by general law. The membership of the existing Commission shall continue until changed by general law, ordinance or this Charter.

#### SECTION 8.7: COMPREHENSIVE PLAN ADOPTED

The Commission shall prepare a comprehensive plan and submit it to Council for its consideration and action. Thereafter, the Commission shall submit to Council its amendments to the comprehensive plan for consideration and action; provided, however, if Council shall fail to act upon said matters the Commission submits to it within ninety days after the date that such plan or amendments thereto shall have been first submitted, the same shall be deemed approved. (Amended by Ordinance 5/8/89)

#### SECTION 8.8: EFFECT OF COMPREHENSIVE PLAN

Before final action shall be taken by Council on the location or design of any street, park, parkway, playground, public memorial, public building, structure or any other public area or project, the Commission shall have previously submitted to Council a written report with recommendations regarding same. Such reports shall also contain a statement as to whether such project is consistent with the comprehensive plan. (Amended by Ordinance 5/8/89)

#### SECTION 8.9: PLAN AND PLATTING CONTROL

To the extent authorized by general law, the Commission shall have control of plans and plats of land within the City and beyond the territorial limits thereof as far as is reasonably necessary to protect the City against inadequately planned streets, highways, sewers and territory; provided, however, said control shall not apply to land outside the City over which platting control is in some other authority. All plans, plats and replats of land, laid out in building lots and streets, intended to be dedicated to public use, shall be

submitted to the Commission for its consideration and no such plan, plat or replat shall be of any legal effect or filed in the offices of the Clerk of the County Commission and the County Assessors of Cabell or Wayne Counties, depending on the county wherein the platted land lies, until such plan, plat or replat shall have endorsed upon it the fact that it has been first submitted to the Commission and by the Commission duly approved; provided, however, that official acceptance of streets and all other rights-of-way intended to be dedicated to public use shall be submitted to City Council by resolution for City Council's approval. (Amended by Ordinance 5/8/89)

#### SECTION 8.10: OFFICIAL MAP

Council shall, by ordinance, establish an official map of the City which shall indicate the location of all existing public streets and such other data as Council may deem appropriate.

#### SECTION 8.11: MODIFICATION OF OFFICIAL MAP

After the establishment of an official map, all street locations, plats or replats approved by Council shall be deemed amendments to the official map and shall be placed thereon.

#### SECTION 8.12: BOARD OF ZONING APPEALS

There shall be a Board of Zoning Appeals consisting of five members, appointed in the manner provided by Chapter 8, Article 24, of the Official Code of West Virginia. Members of the Board of Zoning Appeals shall possess the qualifications prescribed by said law and shall be appointed for terms established therein.

#### SECTION 8.13: POWERS AND DUTIES OF BOARD OF ZONING APPEALS

The Board of Zoning Appeals shall be governed by and shall have all powers and duties prescribed by Chapter 8, Article 24, of the Official Code of West Virginia, this Charter and ordinance in conformity therewith. In addition however, the Board of Zoning Appeals shall have power to employ independent legal counsel to aid in the performance of its duties.

SECTION 8.14: CONTINUITY OF BOARD OF ZONING APPEALS

The Board of Zoning Appeals heretofore established shall continue to operate as though authorized under the terms of Chapter 8, Article 24, of the Official Code of West Virginia. All action lawfully taken prior to the adoption of this Charter is hereby validated and continued in effect until amended or repealed in the manner provided by general law.

ARTICLE NINE

DEPARTMENT OF ADMINISTRATION AND FINANCE

SECTION 9.1: DIRECTOR OF ADMINISTRATION AND FINANCE; QUALIFICATIONS, SELECTION AND TENURE

There shall be a Department of Administration and Finance the head of which shall be the Director of Administration and Finance who shall be appointed by the Mayor and serve at the will and pleasure of the Mayor. The Director of Administration and Finance shall be a person of proven executive and administrative ability.

SECTION 9.2: POWERS AND DUTIES

Under the supervision, direction and control of the Mayor, the Director of Administration and Finance shall have supervision and control of the work and management of the Division of Finance, Division of Purchasing, Division of Personnel, Division of Data Processing and such other duties as the Mayor may require of him or her.

SECTION 9.3: FINES AND FEES SHALL BE PAID TO DEPARTMENT OF ADMINISTRATION AND FINANCE

All fines and fees received by any officer or employee of the City shall be paid over to the Department of Administration and Finance daily or at intervals Council may specifically prescribe.

#### SECTION 9.4: DIVISION OF FINANCE, DIRECTOR OF THE DIVISION OF FINANCE, QUALIFICATIONS

There shall be a Division of Finance the head of which may be the Director of the Division of Finance, The Director of the Division of Finance shall have knowledge of municipal accounting and taxation and shall have experience in budgeting and financial control.

#### SECTION 9.5: POWERS AND DUTIES

The Director of the Division of Finance shall have authority and shall be required to: Collect or provide for the collection of all taxes, special assessments, license fees and other revenues of the City and receive all other moneys payable to the City, except as otherwise provided by general law; maintain custody of all public funds belonging to or under the control of the City and deposit funds in such depositories as may be designated by resolution of Council or, if no such resolution be adopted, in such depositories as may be designated by the Mayor; supervise the disbursement of all moneys and control all expenditures to insure that budget appropriations are not exceeded; maintain a general accounting system for the City and each of its offices, departments, divisions and agencies; keep books for and exercise financial budgetary control over each office, department, division and agency; keep separate accounts for the items of appropriation contained in the City budget each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations chargeable against it and the unencumbered balance; require reports of receipts and disbursements from each office, department, division and agency of the City to be made daily or at such intervals as he or she may deem expedient; except as otherwise provided by general law, maintain custody of all investment funds of the City, or in possession of the City in a fiduciary capacity, and of all bonds and notes of the City and receive and deliver City bonds and notes for transfer, registration or exchange; supervise all special assessments for the City or any of its agencies and give notice of special assessments as may be required by law; prepare all municipal bond issues; assist the Mayor as he or she may require in the preparation of monthly and yearly financial reports and in the preparation of the budget; conduct or provide for the conducting of a complete and accurate annual physical inventory of all City owned equipment of the initial purchase value of One Hundred Dollars or more; provided, however, Council may, by ordinance, provide for the increase or decrease of the purchase value amount herein specified; and perform such other duties as may be required of him or her by this Charter, ordinance or general law.

#### SECTION 9.6: ACCOUNTING SUPERVISION AND CONTROL

The Director of the Division of Finance shall also have authority and shall be required to: prescribe the forms of receipts, requisitions, vouchers, bills or claims to be used by the offices, departments, divisions and agencies of the City; examine and approve all contracts and other documents by which the City incurs financial obligation; inspect, audit and approve, before payment, all purchase orders, bills, invoices, payrolls and other evidence of claims, demands or charges against the City; and inspect and audit any account or record of financial transaction which may be maintained in any office, department, division or agency of the City, apart from or subsidiary to, the accounts kept in the office of the Director of the Division of Finance.

#### SECTION 9.7: DIVISION OF PURCHASING, DIRECTOR OF THE DIVISION OF PURCHASING, QUALIFICATIONS

There shall be a Division of Purchasing the head of which may be the Director of the Division of Purchasing who shall have knowledge and experience in the field of municipal purchasing.

#### SECTION 9.8: POWERS AND DUTIES

The Director of the Division of Purchasing shall have authority and shall be required to: Contract for and purchase all supplies, materials, equipment and services required for each office, department, division or agency of the City; prepare or maintain, endorse and publish specifications with respect to supplies, materials and equipment required by the City; inspect or supervise the inspection of all deliveries of supplies, materials and equipment to determine their quality, quantity and conformity with specifications and provide for the distribution thereof to the appropriate office, department, division or agency; have charge of storerooms and warehouses; and transfer to and between offices, departments, divisions and agencies or sell surplus, obsolete or unused supplies, materials and equipment.

#### SECTION 9.9: COMPETITIVE BIDDING

Before the Director of the Division of Purchasing shall make any purchase or contract for supplies, materials or equipment, he or she shall give ample opportunity for competitive bidding under such rules and regulations as Council shall prescribe; provided, however, Council shall not except any contract, purchase or sale from the requirement of competitive bidding.

SECTION 9.10: DIVISION OF PERSONNEL, DIRECTOR OF THE  
DIVISION OF PERSONNEL, QUALIFICATIONS,  
POWERS AND DUTIES

There shall be a Division of Personnel the head of which may be the Director of the Division of Personnel who shall be experienced in personnel management and whose powers and duties shall be prescribed by Council.

SECTION 9.11: PERSONNEL POLICY

Employment, appointments and promotions in the administrative service of the City shall be made according to merit and fitness. No person in the employment of the City or seeking employment with the City shall be appointed, employed, compensated, promoted, reduced, removed or in any way favored or discriminated against because of his or her race, sex, religion, age, handicap or national origin.

SECTION 9.12: PERSONNEL POWERS AND DUTIES OF MAYOR

The Mayor, or his or her subordinate, shall cause to be prepared, and timely reviewed and revised, personnel rules which shall be considered by Council and adopted as proposed, or amended by Council and adopted, by ordinance, or referred to the Mayor for additional study and resubmission. The rules shall provide: for the classification of all City positions based on the duties, authority and responsibility of each position with adequate provision for reclassification of any position whenever warranted; methods for determining the merit and fitness of candidates for appointment, employment or promotion; the hours of work, attendance regulations and provisions for sick and vacation leave; the policy and procedure governing persons holding provisional appointments; the policy and procedure governing relationships with employee organizations; the policy regarding in-service training programs; grievance procedures, including procedure for the hearing of grievances and for the reduction in force and removal of employees; and any other practices and procedures necessary to the administration of the City personnel system. Except as otherwise provided in this Charter, whenever it is deemed necessary, the officer or body having authority to appoint an officer or employee may appoint a temporary officer or employee; provided, however, such temporary appointment shall not extend beyond a term of sixty days. There shall be no extension of any temporary appointment.

### SECTION 9.13: PERSONNEL POWERS AND DUTIES OF COUNCIL

Except as otherwise provided by general law or this Charter, Council shall fix the salaries of City employees and officers and may, by ordinance, define the duties of any City officer or employee. Neither Council nor any member thereof shall direct, interfere or obstruct the appointment or removal of any City employee, except an employee whom Council is authorized to employ and remove under the provisions of this Charter or general law. Except for the purpose of inquiry, Council and its members shall deal with the administrative service solely through the Mayor and neither Council nor any member thereof shall give orders to any subordinates of the Mayor, either publicly or privately. Violation of the provisions of this section by any Council member shall constitute official misconduct. Nothing herein contained, however, shall prohibit any Council member from bringing to the attention of the Mayor any fact or circumstance which may indicate misconduct or deficiency on the part of any personnel.

### SECTION 9.14: EMPLOYEE RETIREMENT AND BENEFIT FUND

Council may, by ordinance, establish and provide for the maintenance of any employee retirement and benefit fund in accordance with general law, provided, however, until amended or repealed, all existing ordinances concerning pensions and pension funds shall continue in full force and effect and nothing contained herein shall in any way affect the continuation or validity of any pension already being paid or funded by the City.

### SECTION 9.15: RESTRICTIONS

Unless otherwise provided by this Charter, no person who holds an elected public office shall, at the same time, be an employee or an elected or appointed officer of the City.

### SECTION 9.16: PROHIBITIONS

Except as otherwise provided by general law, no person in City government service shall directly or indirectly solicit any assessment, subscription or contribution for any political purpose whatever from any person holding a position or in the employ of City government and except for the Mayor and members of Council, no employee of the City shall take any active part in the management or promotion of any political party or political campaign. Any person who willfully violates any of the provisions of this

section shall be subject to such punishment as Council shall, by ordinance, prescribe and such person shall, for a period of five years, be ineligible for any municipal appointment or employment and if he or she is an officer or employee of the City at the time of such violation, he or she shall forfeit the office or position he or she holds.

SECTION 9.17: AFFIRMATIVE ACTION

In accordance with general law, Council shall provide, by ordinance, for an Affirmative Action Program for any or all positions of City employment.

SECTION 9.18: DIVISION OF DATA PROCESSING,  
DIRECTOR OF THE DIVISION OF DATA  
PROCESSING, QUALIFICATIONS

There shall be a Division of Data Processing the head of which may be the Director of the Division of Data Processing who shall be a person of training and experience in the fields of Data Processing and Computer Sciences.

SECTION 9.19: POWERS AND DUTIES

The Director of the Division of Data Processing shall have authority and shall be required to provide all computer and other data processing services required by any office, department, division or agency of the City.

ARTICLE TEN  
BUDGET AND FINANCIAL PROCEDURES

SECTION 10.1: FISCAL YEAR

The fiscal year of the City shall begin on the first day of July of each calendar year and end on the last day of June of the following calendar year.

SECTION 10.2: SUBMISSION OF BUDGET AND BUDGET  
MESSAGE

On or before the fifteenth day of February of each year, the Mayor shall submit to Council the budget for the next fiscal year and an accompanying message. In addition, within sixty days from the beginning of each fiscal year, the Mayor shall ascertain the true carry-over balance of accounts of the City and shall submit to Council amendments to the budget reflecting same.

### SECTION 10.3: BUDGET MESSAGE

The Mayor's budget message shall explain the budget, both in fiscal terms and in terms of work programs. It shall outline proposed financial policies of the City for the next fiscal year, describe important features of the budget, indicate all major changes from the current year in financial policies, expenditures and revenues together with the reason for such changes, summarize the City's debt position and include such other material as the Mayor deems desirable.

### SECTION 10.4: BUDGET

The budget shall provide a complete financial plan of all City funds and activities for the next fiscal year and, except as required by law or this Charter, shall be in such form and contain such information as the Mayor deems desirable or Council may require. In organizing the budget the Mayor shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity and object. It shall begin with a clear general summary of its contents, shall show in detail all estimated income, indicating the proposed property tax levy and all proposed expenditures, including debt service, for the next fiscal year and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections: proposed expenditures for current operations during the next fiscal year, detailed by office, department, division and agency in terms of their respective work programs and the proposed method of financing such expenditures; proposed capital expenditures during the next fiscal year detailed by office, department, division and agency when practicable, and the proposed method of financing each such capital expenditure; and anticipated net surplus or deficit for the next fiscal year of each utility owned or operated by the City and the proposed method of its disposition. Subsidiary budgets for each City utility, board, agency or commission, giving detailed income and expenditure information shall be attached as appendices to the budget. Without respect to the net surplus or deficit of any utility operated by the City, the total of proposed expenditures shall not exceed the total of estimated income.

### SECTION 10.5: CAPITAL PROGRAM

The Mayor shall prepare and submit to Council a five-year capital program concurrently with the submission of the annual budget. The capital program shall include: a clear general summary of its contents; a list of all

capital improvements which are proposed to be undertaken during the five fiscal years next ensuing with appropriate supporting information as to the necessity for such improvements; cost estimates, method of financing and recommended time schedules for each such improvement; and the estimated annual cost of operating and maintaining the facilities to be constructed or acquired. This information may be revised and extended each year with regard to capital improvements still pending or in the process of construction or acquisition. (Amended by Ordinance 5/8/89)

#### SECTION 10.6: COUNCIL ACTION ON BUDGET

Council shall publish in one or more newspapers of general circulation in the City the general summary of the budget together with a notice stating the times and places where copies of the message and budget are available for inspection by the public and the time and place, not less than two weeks after such publication, for a public hearing on the budget. After the public hearing, Council shall meet upon call by the Chairman for work sessions on the budget whether to adopt the budget with or without amendment. Provisions of Sections 3.13 and 14.17 pertaining to attendance at meetings shall apply to the budget work sessions. In amending the budget, it may add or increase programs or amounts and may delete or decrease programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit; provided, however, no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income. Council shall adopt the budget and enter its order adopting the statutory levy estimate and laying the levies on the third Tuesday of April in the fiscal year currently ending. In addition, Council shall also amend and revise the budget pursuant to the requirements of Section 10.2 of this Charter. Adoption of the budget shall constitute appropriation of the amounts specified therein as expenditures from the funds indicated. (Amended by Ordinance, 5/8/89) (Further amended, 1993 Municipal Election; effective date: July 1, 1993)

#### SECTION 10.7: COUNCIL ACTION ON CAPITAL PROGRAM; NOTICE AND HEARING

Council shall publish the general summary of the capital program concurrently with the publication of the annual budget in one or more newspapers of general circulation in the City. Council shall also publish therewith a notice stating the times and places where copies of the capital program are available for inspection by the public and the time and place for a public hearing on the capital program. Said public hearing shall be held not less than two weeks after such publication (Amended by Ordinance, 5/8/89)

## SECTION 10.8: ADMINISTRATION OF BUDGET

At such time as the Mayor shall specify, each department, division, office or agency shall submit work programs for the next fiscal year showing the requested allotments of its appropriation by periods within the year. The Mayor shall review and authorize such allotments, with or without revision, as early as possible in the fiscal year. He or she may revise such allotments during the year if he or she deems it desirable and shall revise them in accord with any supplemental, emergency, reduced or transferred appropriations, subject to any limitations imposed by general law.

## SECTION 10.9: TRANSFERS OF APPROPRIATIONS

Except as otherwise provided by general law, the Mayor may at any time transfer any unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department, division or agency. At the request of the Mayor and within the last three months of the budget year, Council may, by resolution, transfer any unencumbered appropriation balance or portion thereof from one office, department, division or agency to another.

## ARTICLE ELEVEN NOMINATIONS AND ELECTIONS

### SECTION 11.1: GENERAL ELECTION LAWS TO CONTROL; TERMS OF OFFICERS

Except as otherwise provided herein, the provisions of general law with respect to primary and general elections, so far as applicable, shall govern the method of nominating and electing the Mayor and members of Council, whose terms of office shall be concurrent and run for a period of four years, provided that, the terms of office for the Mayor and members of Council elected in the 1997 general election shall run for a period of three years and six months commencing on the first day of July, 1997, and ending on the thirty-first day of December, 2000, and said term shall constitute a full term of office. All subsequent terms of office for the Mayor and members of Council shall run for a period of four years. \*Amended by ordinance 9/13/93 (Further amended, 1996 General Election Cabell County; effective date: January 1, 1997)

## SECTION 11.2: MUNICIPAL EXECUTIVE COMMITTEES

Each Municipal Executive Committee shall be composed of those members of the County Executive Committees of Cabell and Wayne counties whose geographical jurisdiction, as county executive committee members, includes areas of the City. Municipal Executive Committee members shall serve for terms concurrent with their respective terms as county executive committee members.

## SECTION 11.3: POWERS AND DUTIES

Municipal Executive Committees shall be governed by Chapter 8, Article 5, Section 14, of the Official Code of West Virginia and shall have all powers and duties prescribed by said law, this Charter and ordinance in conformity therewith.

## SECTION 11.4: PRIMARY ELECTIONS; TIME, PLACE AND CERTIFICATIONS OF CANDIDACY

Except as otherwise provided herein concerning the first officers to be elected under this Charter, primary elections shall be held at the voting places in each of the election districts of the City for the purpose of nominating candidates for the office of Mayor and all Council members for the next general election on the first Tuesday in April in the year 1989 and on such day in each fourth year thereafter, provided that, beginning in the year 2000, the primary election shall be held on the same day in said year as the primary election for the State of West Virginia and the County of Cabell, and on such day in each fourth year thereafter. Any eligible person desiring nomination for any municipal elected office to be filled at such election shall file with the City Clerk a certificate declaring himself or herself to be a candidate for the nomination for office, together with payment of the filing fee as hereinafter prescribed, which certificate and filing fee must be received by the City Clerk after midnight on the first day of January next preceding the primary election day or if mailed, shall be postmarked after that hour and before midnight on the thirty-first day of January next preceding the primary election day or if mailed, shall be postmarked before that hour and which certificate shall be in form or effect as follows:

"CERTIFICATE OF CANDIDACY

I, \_\_\_\_\_, hereby certify that I am a candidate for the nomination for and election to the office of \_\_\_\_\_ to represent the \_\_\_ district or city at-large (circle one), and the \_\_\_ political party. I desire my name printed on the official ballot to be voted at the primary election to be held on the \_\_\_ day of April, 19\_\_ . I hereby certify that I am a legally qualified elector of the City of Huntington, \_\_\_\_\_ County, West Virginia; that my residence is located at \_\_\_\_\_ in said City; that I am eligible to hold the said office; and that I am a candidate for said office in good faith.

CANDIDATE SIGNATURE

PRINT NAME

Signed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 19\_\_ .

Notary Public in and for Cabell or Wayne Counties, West Virginia, (or some other officer qualified to administer oaths)"

Every person who becomes a candidate in any such primary election shall, at the time of filing such certificate of candidacy, pay a filing fee as follows: a candidate for Mayor shall pay a fee of Two Hundred Fifty Dollars; a candidate for Council member shall pay a fee of Sixty Dollars. Council may, by ordinance, change the filing fees specified herein. No person shall file more than one Certificate of Candidacy in any primary election.

\* Amended by ordinance 9/13/93 (Further amended, 1996 General Election Cabell County; effective date: January 1, 1997)

SECTION 11.5: GENERAL ELECTIONS; TIME AND PLACE

Except as otherwise provided herein concerning the election of the first officers to be elected under this Charter, general elections for the offices of Mayor and all Council members shall be held on the first Tuesday in June in the year 1989 and on such day in each fourth year thereafter. The officers elected thereat shall assume office on the first day of July of the year in which such general election is held with their terms to expire as soon as their successors have been elected and qualified. Beginning in the year 2000, general elections for the offices of Mayor and all Council members shall be held on the Tuesday next after the first Monday in November of such year,

and on such day in each fourth year thereafter. The officers elected thereat shall assume office on the first day of January of the year next after such general election is held with their terms of office to expire as soon as their successors have been elected and qualified. \* Amended by ordinance 9/13/93 (Further amended, 1996 General Election Cabell County; effective date: January 1, 1997)

#### SECTION 11.6: FIRST OFFICERS UNDER THIS CHARTER; NOMINATIONS, ELECTION AND TERMS

The first primary municipal election under this Charter shall be held on Tuesday, September 10, 1985, and the first general municipal election shall be held on Tuesday, November 5, 1985, to elect a Mayor and all Council members provided for under this Charter, whose terms shall begin on January 1, 1986, and expire as soon as their successors have been elected and qualified. The certificates of candidacy for such first primary municipal election shall be filed after midnight July 1, 1985, and before midnight on July 31, 1985, or if mailed, postmarked after midnight July 1, 1985, and before midnight July 31, 1985. The dates of all subsequent primary and general elections and filings of certificates of candidacy shall be governed by the provision of Sections 11.1, 11.4 and 11.5 of this Charter. \* Amended by ordinance 9/13/93 (Further amended, 1996 General election Cabell County; effective date: January 1, 1997)

#### SECTION 11.7: MAJORITY VOTE REQUIRED

No candidate for office shall be declared elected to any office under this Charter without having received as a candidate in the immediately preceding general election a majority of the votes cast for that particular office; provided, however, nothing herein shall apply to candidates for the office of at-large Council member.

#### SECTION 11.8: DETERMINATION OF ELECTION RESULTS

Every qualified elector shall be entitled to vote for one candidate for the office of Mayor, one candidate for the office of district Council member to represent the district in which the qualified elector resides and two candidates for the office of at-large Council member. No person shall be elected to city office without being nominated in the manner provided herein at a partisan primary election to be held at the times and places specified in Sections 11.5 and 11.7 of this Charter. Immediately upon expiration of the time for filing Certificates of Candidacy as required by Sections 11.5 and 11.7 of this Charter, the City Clerk shall cause to be published in a newspaper having general circulation in the City the names of the candidates as they will

appear on the ballot for the primary election. Names of the candidates for each nomination shall be placed on the ballot and in addition to the requirements of Section 11.10 of this Charter, the ballot shall contain instructions to vote for one nominee or candidate, except where the offices to be filled are for Council members at-large, in which case the instructions shall inform the voter to vote for two nominees or candidates. Votes shall be counted as provided by general election law. In primary elections, the candidates representing each political party and receiving the highest number of votes for nomination for Mayor and each district Council member office shall be nominated. As to the offices of at-large Council members in primary elections, the candidates representing each political party and receiving the highest and next highest number of votes with no more than one residing in any one of the municipal election districts set out in Section 3.3 of this Charter shall be nominated. In general elections the names of the successful nominees shall be placed on the ballot. In the general election, the nominee receiving the highest number of votes for election to the offices of Mayor and each district Council member office shall be elected. As to the offices of at-large Council members in general elections, the two nominees receiving the highest and next highest number of votes with no more than one residing in any one of the municipal election districts set out in Section 3.3 of this Charter shall be elected to the offices of Council member at-large.

#### SECTION 11.9: BALLOTS FOR MUNICIPAL ELECTIONS

The ballot to be used in all municipal elections shall contain the names of all candidates, specify their respective residence address and the election district wherein such residence is located together with their political party affiliation, unless such candidate is independent from any political party, in which case the ballot shall so state. The order in which names of nominees and candidates appear on the ballot shall be determined by drawing of lot. The City Clerk shall conduct said drawing in accordance with the requirements of general law. It shall be the duty of the City Clerk to prepare the ballot for all regular and special municipal elections in accordance with the provisions of general law and not less than ten days prior to any election, the City Clerk shall cause a sample ballot to be published in a newspaper having general circulation in the City

## SECTION 11.10: APPOINTMENT OF ELECTION OFFICIALS

It shall be the duty of the Municipal Executive Committees to nominate qualified electors to serve as precinct election officials during a municipal election and the Municipal Executive Committees shall publicly encourage qualified electors to apply for nomination. The Municipal Executive Committees shall submit their nominations to Council not less than thirty days prior to the election in which the election officials are to serve. After determining that the qualified electors nominated by the Municipal Executive Committees possess the qualifications set forth by the general election laws of the State of West Virginia and not less than twenty days prior to the election in which the election officials are to serve, Council shall appoint the qualified persons nominated by the Municipal Executive Committees to serve as election officials in said election. In the event Council shall determine that any person nominated by the election commission is not qualified to serve as an election official or in the event any person appointed by Council shall refuse to serve as an election official, Council shall proceed to fill the vacancy at the earliest possible time by the same procedure.

## SECTION 11.11: ELECTION OFFICIALS; COMPENSATION

A uniform election board consisting of three commissioners and two clerks, shall be appointed as aforesaid to serve in each voting precinct of the City during a municipal election. Each election board shall be composed of one clerk representing each political party and at least one commissioner representing each political party. By resolution adopted not less than forty-five days prior to each election, Council shall determine the compensation to be paid to the precinct commissioners and clerks, but in no event shall such compensation exceed the compensation payable under general law to precinct election officials serving during a general election of the State of West Virginia.

## SECTION 11.12: REGISTRATION RECORDS, RETURN OF BALLOTS AND SUPPLIES, CANVASSING RETURNS, ELECTION CONTESTS

At least three days before a municipal election, the City Clerk shall procure from the Clerk of the County Commissions of Cabell and Wayne counties the necessary registration records and shall deliver them, together with all ballots and other election supplies, to the election official in each precinct designated by Council. The election officials shall, as soon as possible after

the closing of the polls, return to the City Clerk the ballots, tally sheets, certificates of the result of the election, registration records, poll books, ballot boxes and any other election supplies. On the first Monday following the election, Council shall canvass the returns of the election and declare and certify the result within five days thereafter. In case of a contest, Council shall be judge of the election, nomination and qualification of all candidates. Notwithstanding the foregoing, Council may, by resolution, contract with the County Commissions of Cabell and Wayne counties or the Clerks thereof, to furnish, distribute, receive and store the ballots and other election supplies, or any part thereof, and to provide facilities for the canvassing of ballots.

#### SECTION 11.13: USE OF VOTING DEVICES

In addition to any other requirements for the conduct of municipal elections, Council shall contract with the County Commissions of Cabell and Wayne counties for the use, in all municipal elections, of any electronic, mechanical or other voting devices available to, owned by or used by such counties for the conduct of county, state and national elections.

#### SECTION 11.14: REGULATIONS OF ELECTIONS

Council shall make regulations which it considers needful or desirable, not inconsistent with this Charter, for the proper conduct of municipal elections and for the prevention of fraud in such elections.

#### SECTION 11.15: QUALIFIED ELECTOR DEFINED

The term "qualified elector" as used in this Charter shall mean a citizen having the qualifications required by general law to vote in the City and who is at that time registered to vote.

### ARTICLE TWELVE INITIATIVE, REFERENDUM AND RECALL

#### SECTION 12.1: INITIATIVE

Qualified electors of the City shall have power to propose ordinances to Council and if Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a City election; provided, however, such power shall not extend to the budget, capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees.

## SECTION 12.2: REFERENDUM

Qualified electors of the City shall have power to require reconsideration by Council of any adopted ordinance and if Council fails to repeal an ordinance so reconsidered, to approve or reject it at a City election; provided, however, such power shall not extend to the budget, capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees.

## SECTION 12.3: PETITIONS

Initiative and referendum petitions must be signed by qualified electors of the City equal in number to at least ten percent of the total number of qualified electors at the last general municipal election. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil in the handwriting of the signer and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation, the full text of the ordinance proposed and shall cite by title the ordinance sought to be reconsidered. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. Except as may be otherwise provided by general law, referendum petitions must be filed within thirty days after adoption by Council of the ordinance sought to be reconsidered.

## SECTION 12.4: PROCEDURE

There shall appear on all petitions the names and addresses of three qualified electors who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. Any one of the three qualified electors or an attorney-at-law acting on their behalf, may file such petitions by delivering the assembled instrument to the City Clerk together with a designation of one address, of one such elector or the attorney-at-law, to which all notices are to be sent and setting out in full the proposed initiative ordinance or citing by title the ordinance sought to be reconsidered. Within twenty days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee at the address so provided, by certified mail. A petition certified insufficient may be

amended once if the petitioners' committee files a notice of intention to amend with the City Clerk within two days after receiving the copy of his or her certificate and files a supplemental petition upon additional papers within ten days after receiving the copy of such certificate. Such supplemental petition shall comply with the requirements of Section 12.3 and within five days after it is filed, the City Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the designated individual by certified mail as in the case of an original petition. If a petition or amended petition is certified sufficient or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under this section within the time required, the City Clerk shall promptly present his or her certificate to Council and the certificate shall then be a final determination as to the sufficiency of the petition. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend or if an amended petition has been certified insufficient the committee may, within two days after receiving the copy of such certificate, file with the City Clerk a request that it be reviewed by Council. Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it and Council's determination shall then be a final determination as to the sufficiency of the petition. A final determination as to the sufficiency of a petition shall nevertheless be subject to judicial review. Whenever required, the burden of proof shall be on the City Clerk to establish the insufficiency of any petition. A final determination of insufficiency, even if sustained upon judicial review, shall not prejudice the filing of a new petition for the same purpose, except in the case of referendum when the applicable time limit has expired.

#### SECTION 12.5: REFERENDUM PETITIONS; SUSPENSION OF EFFECT OF ORDINANCE

When a referendum petition is timely filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when there is a final determination of insufficiency of the petition, the petitioners' committee withdraws the petition, Council repeals the ordinance or upon final certification of the results of the City election favoring the ordinance sought to be repealed.

## SECTION 12.6: ACTION ON PETITIONS

When an initiative or referendum petition has been finally determined sufficient, Council shall promptly consider the proposed initiative ordinance in the manner provided for the enactment of ordinances or reconsider the referred ordinance by voting its repeal. If Council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the electors of the City. The election on a proposed or referred ordinance shall be held not less than thirty days and not later than one year from the date of the final Council vote thereon. If no regular City election is to be held within the period prescribed in this section, Council shall provide for a special election. Otherwise, the vote shall be held at the same time as such regular election, except that Council may provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

## SECTION 12.7: RESULTS OF ELECTION

If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

## SECTION 12.8: POWER OF RECALL

Qualified electors, authorized to vote for the particular office, shall have the power to recall the Mayor or any member of Council whether elected by popular vote or selected to fill a vacancy and may exercise such power by filing with the City Clerk a petition signed by qualified electors, authorized to vote for the particular office, equal in number to at least twenty percent of the total number of qualified electors, authorized to vote for the particular office, at the last general municipal election. The petition shall meet the applicable requirements of Section 12.3 and 12.4 of this Charter, shall contain a demand for the removal of the subject officer or officers and shall contain a general statement of the reasons for which the removal is sought.

## SECTION 12.9: ELECTION UNDER RECALL PETITION

If the petition is certified sufficient in accordance with the applicable requirements set out in Section 12.3 and 12.4 of this Charter, Council shall cause a special election to be held not less than thirty days nor more than ninety days from the date of such certification, unless a general municipal election shall occur within one hundred twenty days from such date. The published notice of such election shall contain the reasons for demanding the recall in not more than two hundred words and a justification by the subject officer within the same limits; provided, however, if the petition seeks to recall more than one officer, each may provide a justification of not more than two hundred words. Ballots shall be in the following form:

"Shall \_\_\_\_\_ be removed  
(from Council) (as Mayor) of the City of  
Huntington?

— For the recall of \_\_\_\_\_  
— Against the recall of \_\_\_\_\_.

Upon certification of the results of the election, if a majority of those voting on the question have favored recall, the office of the individual so recalled shall be vacant.

## SECTION 12.10: FILLING VACANCY CAUSED BY RECALL

When a vacancy occurs as the result of a recall election or when an officer resigns after a recall petition certified by the City Clerk to be sufficient is presented to Council, the vacancy shall be filled in accordance with the provisions of this Charter relating to the filling of vacancies in the respective office involved.

## SECTION 12.11: LIMITATIONS ON RECALL

No recall petition shall be filed against any officer within six months after he or she takes office nor within six months prior to the end of his or her term. No officer shall be subjected to more than one recall election during a term of office.

ARTICLE THIRTEEN  
SUCCESSION IN GOVERNMENT

SECTION 13.1: INTERIM CHIEF EXECUTIVE OFFICER

On and after the effective date of this Charter, the City Manager, as heretofore constituted, shall exercise such powers and duties as are given the chief executive by this Charter. The City Manager shall so serve until the first Mayor under this Charter shall have been elected and qualified, at which time his or her appointment and office shall terminate.

SECTION 13.2: CONTINUITY OF ADMINISTRATIVE  
PERSONNEL AND OFFICES

All persons holding other administrative positions in City government at the time this Charter takes effect shall continue in such position and in the performance of their duties until dismissed or removed by the Mayor or other empowered authority. The powers conferred and the duties imposed upon any office, department or agency of the City by general law shall, if such office, department or agency is abolished by this Charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by Council, unless otherwise provided in this Charter.

SECTION 13.3: CONTINUITY OF GOVERNING BODY

On and after the effective date of this Charter, the members of Council, as heretofore constituted, shall exercise such powers and duties as are given to Council by this Charter generally, and for conducting the first election for Mayor and members of Council as set out in Article Eleven of this Charter. Such Council shall so serve until members of the first Council under this Charter shall have been elected and qualified, at which time their terms of office shall terminate.

SECTION 13.4: CONTINUITY OF OFFICES, DEPARTMENTS,  
DIVISIONS, AGENCIES OR BOARDS

Any other office, department, division agency or board provided in this Charter with a name or with powers and duties the same or substantially in same as those of an office, department, division, agency or board heretofore existing shall be deemed to be a continuation of such heretofore existing office, department, division, agency or board until changed by competent authority.

Any provision in any law, rule, regulation, contract, grant or other document relating to such heretofore existing office, department, division, agency or board shall, so far as not inconsistent with the provisions of this Charter, apply to such office, department, division, agency or board provided for by this Charter.

#### SECTION 13.5: TRANSFER OF RECORDS AND PROPERTY

All records, property and equipment whatsoever of any office, department, division, agency, board or part thereof, all the powers and duties of which are assigned to any other office, department, division, agency or board by this Charter, shall be transferred and delivered to the office, department, division, agency or board to which such powers are so assigned. If part of the powers and duties of any office, department, division, agency, board or part thereof are by this Charter assigned to another office, department, division, agency or board, all records, property and equipment relating exclusively thereto shall be transferred and delivered to the office, department, division, agency or board to which such powers and duties are so assigned.

#### SECTION 13.6: SUCCESSION IN INTEREST; PENDING ACTIONS AND PROCEEDINGS

The City of Huntington, as successor in interest to the present municipal corporation of the same name, shall succeed to, own, possess and enjoy all property and all right, title and interest of every kind and nature vested in or belonging to such municipal corporation at the time this Charter becomes effective. No action or proceeding, civil or criminal, pending at the time this Charter takes effect, brought by or against the City or any office, department, division, agency, board or officer thereof, shall be affected by the adoption of this Charter or by anything herein contained. No such action or proceeding shall abate by reason of the fact that functions, powers and duties of any office, department, division, agency, board or officer party thereto may under this Charter be assigned or transferred to another office, department, division, agency, board or officer, but in that event, the same may be prosecuted or defended by the head of the office, department, division, agency or board to which such functions, powers and duties have been assigned or transferred under this Charter.

#### SECTION 13.7: EFFECT ON EXISTING LAW

All existing ordinances and resolutions, administrative rules, regulations and practices, if not inconsistent or in conflict with this Charter, shall continue in full force and effect until repealed or modified by competent authority. All ordinances, resolutions, administrative rules, regulations and

practices that are inconsistent or in conflict with this Charter shall, unless sooner repealed or modified, continue in full force and effect for a period of sixty days and at the end of that period shall, to the extent of such inconsistency or conflict, be of no further force or effect.

## ARTICLE FOURTEEN GENERAL PROVISIONS

### SECTION 14.1: CHIEF OF POLICE

The Chief of Police shall be appointed by the Mayor with the approval of Council to serve at the will and pleasure of the Mayor. The Chief of Police shall be a person of proven administrative ability with experience and training in law enforcement. Subject to the direction and supervision of the Mayor, the Chief of Police shall be responsible for the supervision and administration of the Police Department and shall require of all police officers the proper discharge of their duties. He or she shall see to the protection of property and the preservation of peace, order and public safety throughout the City and shall cause all violators of City ordinances and of general law to be apprehended and brought to trial before the Municipal Court or other proper tribunal. Under the direction and supervision of the Mayor, the Chief of Police shall also perform such other duties as may be required of him or her by this Charter, ordinance or general law.

### SECTION 14.2: CHIEF OF FIRE DEPARTMENT

The Chief of the Fire Department shall be appointed by the Mayor with the approval of Council to serve at the will and pleasure of the Mayor. The Chief of the Fire Department shall be a person of proven administrative ability with experience and training in the suppression and prevention of fires. Subject to the direction and supervision of the Mayor, the Chief of the Fire Department shall be responsible for the supervision and administration of the Fire Department and shall require of all firemen the proper discharge of their duties. He or she shall make such inspections of buildings and property throughout the City as may be necessary to discover fire hazards and shall take all proper measures to eliminate such hazards and shall keep an accurate record of all fires, inspections and fire hazards within the City. Under the direction and supervision of the Mayor, the Chief of the Fire Department shall also perform such other duties as may be required of him or her by this Charter, ordinance or general law.

### SECTION 14.3: RESIDENCY REQUIREMENT

Any person employed or appointed under this Charter shall be a resident of the City of Huntington at the time they are employed or appointed or shall become a resident of the City of Huntington within ninety days from their employment or appointment and shall remain a resident of the City of Huntington during their respective tenure in office or period of employment. There shall be no exception or waiver of the requirements contained in this section and any violation of any requirement contained herein shall result in termination of employment and a vacancy in the respective office or position. The Mayor shall be charged with enforcement of this section. (Amended by Ordinance 5/8/89) CLERK'S NOTE: The residency requirement provided for in this section was modified by Orders of the Circuit Court of Cabell County, West Virginia entered on September 29, 1994 and November 4, 1994 in the case of Steven Ellis, et al. v. The City of Huntington, et al. -- Circuit Court of Cabell County, West Virginia -- Civil Action No. 93-C-2443 (1994). The Court's Orders supersede and take precedence over the provisions of this section and should be read and applied in lieu thereof. Copies of the Court's Orders are on file in the Office of the City Clerk and available for inspection and copying during regular business hours Monday through Friday.

### SECTION 14.4: RESIDENT DEFINED

As used in this Charter, the term "resident" shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of the City of Huntington or within the boundaries of the territory referred to in this Charter, as the context may require, together with the intent to maintain said usual and bona fide place of abode for an indefinite period of time in the future.

### SECTION 14.5: BONDS.

Before entering the duties of their office, each member of Council, the Mayor, the City Clerk, each member of the Election Commission and each Director or Chief of a City office, department, division or agency and such other personnel as Council may require, shall give bond for the faithful performance of their duties, payable to the City of Huntington, in such amounts and with such corporate surety as may be approved by Council. Council may provide for obtaining a blanket bond covering all City officers and employees, designating specific officers or employees whose bond shall be in excess of the amount of the blanket bond. The premiums on such bond or bonds shall be paid by the City after it has been ascertained that the premiums are not in excess of the

schedule filed by the bonding company with the Commissioner of Insurance of West Virginia. All bonds shall be subject to approval by the City Attorney as to form and substance and when so approved, shall be endorsed with his or her signature.

#### SECTION 14.6: SEPARABILITY CLAUSE

If any article, section, subsection, paragraph, sentence, clause or word of this Charter is for any reason held invalid or unconstitutional, such holding shall not affect the validity, constitutionality or application of any other portion of this Charter.

#### SECTION 14.7: REFERENCE TO LAW

A reference contained in this Charter to the Official Code of West Virginia or a provision thereof, to any constitution, or a provision thereof or to general law shall be construed to mean the respective law as it exists on the effective date of this Charter or as it may thereafter be amended. Where additional parts are added to the subject matter of such law referred to in this Charter, the reference shall include such additional parts.

#### SECTION 14.8: SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS

Whenever the provisions of this Charter or any ordinance, rule, administrative regulation or order pursuant thereto, require that a meeting be held or that an act be done on any particular day of the month or within any period of time prescribed or allowed, if that day or the last day occurs on a Saturday, Sunday or legal holiday, the following day which is not a Saturday, Sunday or legal holiday shall be deemed to be the one intended.

#### SECTION 14.9: LOSS OF QUALIFICATION BY OFFICER OR EMPLOYEE; VACANCY CREATED

In the event that any officer or employee of the City shall, subsequent to his or her election, appointment or employment, cease to possess any of the requisite qualifications provided for his or her office or position, there shall thereupon exist a vacancy in such office or position, to be filled pursuant to this Charter or other applicable law.

#### SECTION 14.10: CONFLICT OF INTEREST

Any City officer or employee who has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to any contractor supplying the City, shall make known that interest to the Mayor and Council and shall refrain from voting upon or otherwise participating in his or her capacity as a City officer or employee in the making of such sale or in the making or performance of such contract. Any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his or her office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the Mayor or Council. A "substantial financial interest" as used herein, shall be deemed to be an interest amounting to more than five percent of the particular business enterprise or contract.

#### SECTION 14.11: CENTRAL GARAGE AND MOTOR POOL

There shall be a central garage and motor pool wherein all automobiles and other vehicles owned by the City shall be registered, stored and controlled when not in use or on assignment and from which the head of any office, department, division, board, commission or agency shall requisition the use of any such automobile or other vehicle as may be required in the performance of his or her duties. The Mayor or his or her designee shall establish and promulgate such rules and regulations respecting such facility as to effect the greatest possible economy and efficiency in its operation. No vehicles shall be permanently assigned to any office, department, division, board, agency or individual thereof without prior approval by Council; provided, however, such approval by Council shall not be required of any vehicle assigned to the police or fire departments. Notwithstanding any provision contained herein, no City owned vehicle shall be taken beyond the corporate limits of the City except in the performance of authorized official city business.

#### SECTION 14.12: PUBLIC ACCESSIBILITY OF RECORDS

All records and documents of every office, department, division, board, commission or agency of the City shall be open to inspection by any citizen, representative of a civic organization or representative of the press at all reasonable times and under reasonable regulations established by Council provided, however, records and documents authorized to be excluded under Chapter 29B, Article 1, of the Official Code of West Virginia or other applicable law shall not be subject to the requirements of this section.

#### SECTION 14.13: SALARY LIMITATION

No officer or employee of the City shall be entitled to receive compensation for more than one position in City government even though he or she performs the duties of two or more positions therein.

#### SECTION 14.14: OATH, QUALIFICATION

Before entering the duties of their office, each member of Council, the Mayor, the City Clerk, each member of the Election Commission and each Director or Chief of a City office, department, division or agency and such other personnel as Council may require, shall take and subscribe to the following oath or affirmation to be filed and kept in the office of the City Clerk:

"I, \_\_\_\_\_, solemnly swear (or affirm) that I will support the constitution of the United States of America and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, ordinances, resolutions, regulations and rules of the City of Huntington, and will faithfully discharge the duties of \_\_\_\_\_ to the best of my skill and judgment."  
When such officer or employee shall have taken and filed such oath with the City Clerk and shall have given such bond as may be required, he or she shall be considered as having qualified for the position to which he or she was elected, appointed or hired; provided, however, if any person so elected, appointed or hired shall not qualify in the manner herein prescribed within fifteen days after he or she shall have been officially declared elected, appointed or hired, said office or position shall by reason thereof, become vacant.

#### SECTION 14.15: AUTHORITY TO CONVEY

Except as otherwise provided by general law, Council may authorize the Mayor or other officer of the City to execute all deeds, conveyances and other instruments on behalf of the City of Huntington and such person shall have authority to execute such instruments in the name of the City of Huntington.

SECTION 14.16: ARTICLE AND SECTION TITLES

The article and section titles or headings in this Charter are intended for convenience only and shall be construed as mere "catchwords" to indicate the content of the article or section and shall not be deemed or taken to be a part of the article or section.

SECTION 14.17: GENERAL ATTENDANCE REQUIREMENT

In addition to any attendance requirement contained in this Charter, if a member of any agency, board or commission authorized or created pursuant to this Charter or delegated authority by other law, absents himself or herself from forty or more percent of the regularly scheduled meetings of said agency, board or commission in any twelve month period, his or her office position or appointment shall become vacant and such vacancy shall be filled according to applicable law.

SECTION 14.18: EFFECTIVE DATE

This Charter shall become effective July 1, 1985.

SECTION 14.19: WHEN VACANCY CREATED

(Repeal and renumber subsequent sections)

(NEW) SECTION 14.19 AMENDMENTS

This Charter may be amended as provided in Chapter 8 of the Official Code of West Virginia, as amended, as therein provided. (Amended by Ordinance 5/8/89)

## APPENDIX "A"

to the

### CHARTER of the CITY OF HUNTINGTON

The nine municipal election districts shall be as follows: District One shall be composed of precinct numbers one and four of Cabell County, West Virginia, together with precinct numbers fifty-nine, sixty, and sixty-one of Wayne County, West Virginia, with a total population of Six Thousand Six Hundred; District Two shall be composed of precinct numbers two, three, five, six, seven and ten of Cabell County with a total population of Five Thousand Eight Hundred Ninety-Four; District Three shall be composed of precinct numbers eleven, twelve, thirteen, and fourteen of Cabell County with a total population of Six Thousand Five Hundred Five; District Four shall be composed of precinct numbers eight, nine, twenty-five, twenty-nine, thirty, thirty-five, and thirty-six of Cabell County with a total population of Six Thousand Three; District Five shall be composed of precinct numbers twenty-six, twenty-seven, twenty-eight, thirty-one, thirty-two, thirty-three, and thirty-four of Cabell County with a total population of Five Thousand Nine Hundred Twelve; District Six shall be composed of precinct numbers thirty-seven, forty-three, forty-five, forty-six, forty-seven, forty-eight and forty-nine of Cabell County with a total population of Six Thousand Four Hundred Ten; District Seven shall be composed of precinct numbers thirty-eight, thirty-nine, forty, forty-one, forty-two, and forty-four of Cabell County with a total population of Six Thousand Three Hundred Ninety-Six; District Eight shall be composed of precinct numbers fifteen, sixteen, seventeen, eighteen, nineteen and twenty of Cabell County with a total population of Five Thousand Four Hundred Ninety-Three; District Nine shall be composed of precinct numbers twenty-one, twenty-two, twenty-three, twenty-four and fifty of Cabell County with a total population of Five Thousand Eight Hundred Three.

## CERTIFICATE

In witness of the completion and adoption of the final draft of the proposed Charter for the City of Huntington by the Huntington Charter Board after the conclusion of Board meetings and consideration of changes and revisions deemed necessary or desirable by the board and public, after a public hearing, duly held and completed, the undersigned members of the Huntington Charter Board have hereunto signed their names, this 25 day of March, 1985.

### HUNTINGTON CHARTER BOARD

Charles Polan, Jr.  
Charles Polan, Jr., Chairman

Stephen Christian  
Stephen Christian, Vice-Chairman

Tom McCallister  
Tom McCallister, Secretary

Peter Barr  
Peter Barr, Member

Garry Black  
Garry Black, Member

Charles Dodrill  
Charles Dodrill, Member

Carol Hughes  
Carol Hughes, Member

Michael Mansour  
Michael Mansour, Member

William Newcomb  
William Newcomb, Member

Nathaniel Ruffin  
Nathaniel Ruffin, Member

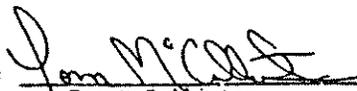
Thomas Scott  
Thomas Scott, Member

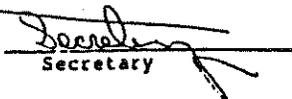
CERTIFICATE

In witness of the completion and adoption of the final draft of the proposed Charter for the City of Huntington by the Huntington Charter Board after the conclusion of Board meetings and consideration of changes and revisions deemed necessary or desirable by the Board and public, after a public hearing, duly held and completed, the Huntington Charter Board has authorized its Secretary to execute this Certificate in witness thereof and in compliance with Chapter 8, Article 3, section 3, of the Official Code of West Virginia, as amended, this 26 day of March, 1985.

HUNTINGTON CHARTER BOARD

Peter Barr  
Garry Black  
Stephen Christian  
Charles Dodrill  
Carol Hughes  
Michael Mansour  
Tom McCallister  
William Newcomb  
Charles Polan, Jr.  
Nathaniel Ruffin  
Thomas Scott

By:   
Tom McCallister

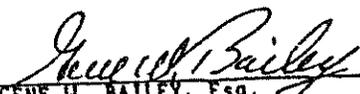
Its:   
Secretary

CERTIFICATE OF THE ATTORNEY GENERAL

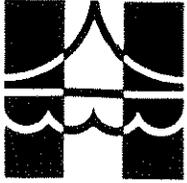
The Attorney General of the State of West Virginia hereby certifies that the Proposed Charter for the City of Huntington, West Virginia, which was approved and adopted by the Huntington Charter Board on the 26th day of March, 1985, a complete copy of which was received by the aforesaid Attorney General on the 28th day of March, 1985, is consistent in all respects with the Constitution and general law of the State of West Virginia.

Given under my hand this 28th day of March, 1985.

CHARLIE BROWN  
ATTORNEY GENERAL

By:   
GENE W. BAILEY, Esq.  
Assistant Attorney General





**RULES**  
**FOR THE TRANSACTION OF BUSINESS BY THE**  
**HUNTINGTON CITY COUNCIL**

SECTION 1 - MEETINGS

A. REGULAR MEETINGS

Council shall meet regularly on the second and fourth Monday of each month at 7:30 p.m., in the Council Chambers of City Hall, excepting only when a regularly scheduled Council meeting shall occur on a legal holiday. Council may designate the City Auditorium, or such other appropriate and convenient location, as the Council Chambers for purposes of conducting its regular meetings and any special meetings that may be called pursuant to the provisions of Subsection B of this Section hereinafter set forth.

B. SPECIAL MEETINGS

Special meetings may be called at any time, upon reasonable notice by the Mayor or the Chairperson of Council, and shall be so called by the Chairperson upon the request of a majority of all members of Council.

The requirement of reasonable notice may be satisfied by hand delivering or by sending by certified mail to each member of Council a written notice of the time, place and purpose of the special meeting. In any case delivery of notice must be made on each member of Council at least twelve hours prior to the time set for the meeting, provided a Council member may waive the notice requirement by filing a written statement

of such waiver with the City Clerk prior to the meeting.

C. LEGAL HOLIDAYS

Whenever a regularly scheduled meeting shall fall on a legal holiday, the following day which is not a Saturday, Sunday or legal holiday shall be deemed to be in the one intended.

SECTION 2 - CHAIRPERSON PRESIDING OFFICER: ABSENCE OF QUORUM

The Chairperson shall preside at all meetings of Council.

At the appointed hour for the meeting, the Chairperson shall take the chair, and call the members of Council to order.

If a quorum be present, the meeting shall be opened for the transaction of business.

If a quorum shall fail to attend the meeting within twenty (20) minutes after the appointed time for such meeting, those present may adjourn to such time as a majority of those present shall determine, after the names of those present shall be entered in the journal.

A majority of the total number of Council members shall constitute a quorum for any purpose not requiring more than a majority vote of Council.

SECTION 3 - PRESIDING OFFICER IN ABSENCE OF CHAIRPERSON

In the absence of the Chairperson, the Vice-Chairperson shall preside at the meeting.

In the absence of the Chairperson and Vice-Chairperson, the Clerk shall call Council to order, and upon motion, Council shall elect one of its members present as a temporary Chairperson, and such temporary Chairperson shall preside at the meeting.

#### SECTION 4 - POWERS OF PRESIDING OFFICER

The presiding officer is vested with the authority to preserve order and decorum during meetings of Council. The presiding officer may order the removal of any person who disrupts or otherwise interferes with the orderly conduct of business. The presiding officer shall also decide all points of order subject, however, to appeal to Council, and shall have the right to call any member of Council to the chair for any part of the meeting.

#### SECTION 5 - ATTENDANCE AT MEETING AND VACANCIES IN COUNCIL

Attendance at meetings and vacancies in Council shall be governed by Section 3.13 of the Charter of the City of Huntington.

In addition, members are expected to attend all work sessions, unless they notify the City Clerk or Assistant City Clerk of illness, absence from the City, or other appropriate excuse.

#### SECTION 6 - ORDINANCES

An ordinance shall be adopted by Council only in cases and with respect to the matters enumerated by the Charter of the City of Huntington or by general law.

If an ordinance is not required by the provisions of the Charter of the City of Huntington, or by general law, Council shall act by resolution.

#### SECTION 7 - FILING OF ORDINANCES AND RESOLUTIONS

All ordinances and resolutions shall be adopted in conformity with the provisions of general law, and shall be

submitted to the City Clerk prior to 4:30 p.m. on the Wednesday before the meeting at which time the ordinance or resolution shall be submitted for its first or only reading, as may be required by general law.

SECTION 8 - ORDINANCE PROCEDURE

Proposed ordinances shall be read by title only at the first meeting that they are placed on the Council's agenda. Ordinances may be read in their entirety if requested by a member. There shall be no vote taken on first reading except where an amendment is proposed. When an amendment is proposed, only the issue as to whether the amendment should be incorporated shall be taken up by Council. If there are no amendments to a proposed ordinance on first reading, Council shall move to the next item without a vote. A motion to delete shall be in order on the first reading of an ordinance. If such a motion is made and properly seconded, Council shall vote on whether to delete the item, after giving the public an opportunity to comment. If, by a majority vote, Council votes to delete, the item will be removed from the agenda and will not be read a second time at the next meeting of Council.

If the principal object of an ordinance is the raising of revenue, the Clerk shall cause a Class I-0 legal advertisement to be published giving notice of the proposed ordinance's consideration. The notice shall state the subject matter and title, the date, time and place of the proposed final vote on adoption, and the place or places within the municipality where the proposed ordinance may be inspected.

All ordinances shall be advertised before the second reading of each ordinance. Thereafter, a vote may be called. No material amendments may be made to an ordinance on second reading.

Where an ordinance, having been submitted to Council for consideration in accordance with the procedures set forth in this Section, and in Chapter 8, Article 11 of the West Virginia Code, as amended, and in SECTION 3.9 of the CHARTER OF THE CITY OF HUNTINGTON, WEST VIRGINIA, has failed to receive the number of votes of members of Council required for adoption and enactment into law, the Council shall not hear or consider said ordinance, nor shall such ordinance be read before the Council at any regular or special meeting thereof for a period of six (6) months immediately next succeeding the date that the ordinance was last considered and voted upon by the Council.

#### SECTION 9 RESOLUTION PROCEDURE

Every proposed resolution shall be read by title at one meeting of this Council.

#### SECTION 10 - STANDING COMMITTEES

There shall be the following standing committees for the purpose of better informing the Council and its members of the work of various city departments, and for the purpose of working with the Mayor.

The standing committees shall include the following:

- a. Administration and Finance
- b. Personnel

- c. Public works
- d. Economic and Community Development
- e. Public Safety (Police, Fire, Legal, Municipal Court)
- f. Recreation (Civic Center, Harris Riverfront Park)
- g. Solid Waste Management
- h. Planning and Zoning

In addition to the standing committees, special purpose committees may be appointed as the need arises.

Appointments to all committees will be made by the Chairperson with the advice and consent of Council.

Committees shall meet during budget preparation time and as needed. Written or oral reports will be made at least quarterly to the full Council.

#### SECTION 11 - ORDER OF BUSINESS

At every regular meeting of Council, the order of business shall be as follows:

- a. Invocation
- b. Pledge to Flag
- c. Roll Call
- d. Reading of Synopsis of the Last Regular Meeting
- e. Reports of Mayor
- f. Ordinances on Second Reading
- g. Ordinances on First Reading
- h. Resolutions
- i. Good & Welfare

SECTION 12 - DEPARTURE FROM ORDER OF BUSINESS

There is to be no departure from the order of business as set forth in these rules except upon the consent of eight of eleven of the members present and voting, seven of ten of the members of Council present and voting or six of eight or nine of the members of Council present and voting.

SECTION 13 - SUSPENSION OF RULES

No rule of Council shall be suspended except by consent of eight of eleven of the members present and voting, seven of ten of the members of Council present and voting or six of eight or nine of the members of Council present and voting. Any such suspension of rules may be made by motion.

SECTION 14 - SPECIAL ORDER BUSINESS

When any matter is made the special order of business for a future meeting, it shall take priority over all other business to be considered at said meeting.

SECTION 15 - WITHDRAWAL OF MATTERS BEFORE COUNCIL

After any communication, petition, complaint, protest, ordinance, resolution or report has been read to the Council by the presiding officer, City Clerk, any member of Council or any other officer or party, the same shall be deemed to be in the possession of the Council, and cannot be withdrawn, except upon a majority vote of the members of Council present and voting.

SECTION 16 - MOTION

After a motion is made and seconded, it shall be stated by the presiding officer before it is debated. The

Council person making the motion shall be the first recognized.

SECTION 17 - METHOD OF VOTING

A rolling roll call vote shall be used at each council meeting where a roll call vote is required to be used under these rules. A rolling roll call vote shall mean that at the first roll call vote of the meeting, the Clerk shall call the roll in alphabetical order except that the Chairperson's name is called last. Upon each subsequent roll call vote taken at the same meeting, the Clerk will then begin the roll call with the next person's name in alphabetical order, so that the same person shall not be required to vote first on all issues: Provided, That the Chairperson shall always vote last.

All ordinances shall be voted upon by roll call. The presiding officer shall determine the method of voting on resolutions, whether it be roll call or voice vote: Provided, That all votes on financial matters and leases be by roll call; and Provided, That any member of Council may call for a roll call vote. If a roll call vote is not called for, the presiding officer shall determine the result. If there is a lack of a clear majority on a voice vote, a roll call vote shall be taken.

The presiding officer shall announce the result of each vote, and the Clerk shall enter the result in the journal.

All members present shall vote on the issue, question, motion, resolution, or other business, and no vote of abstention, disqualification, pass or other similar such vote shall be permitted except as provided by Charter of general law. If there is a conflict of interest, it must be stated before voting

begins.

SECTION 18 - MEMBERS NOT TO WITHDRAW

After a member of Council has, at any meeting, been recorded as present, he or she shall not, without permission of the presiding officer, absent himself from such meeting until adjourned.

SECTION 19 - CONDUCT OF MEMBERS

Every member of Council shall confine himself or herself to the question before the Council, and avoid personal references or language which is not conducive to the orderly transaction of business.

No member shall interrupt another while speaking, except to make a point of order, the point to be briefly stated to the presiding officer.

No member shall, while the Council is sitting, interrupt or hinder its business by standing, moving about, talking, expressing approval or disapproval or any of the proceedings, or by tending to disrupt or confuse.

SECTION 20 - RECOGNITION OF MEMBERS

When two or more members of Council request recognition at the same time, the presiding officer shall name the one first to speak.

SECTION 21 - LIMITATION ON NUMBER AND LENGTH OF SPEECHES

No member of Council shall speak more than once on the same question, until every member choosing to speak shall have done so, nor more than twice, nor for a period of time in excess

of fifteen minutes on any question, without permission of the majority of Council present at said meeting.

SECTION 22 - CALLING MEMBERS TO ORDER

If, in speaking, any member of Council transgresses the rules of the Council, the presiding officer shall call him or her to order.

If there be no appeal, the decision of the chair shall govern.

If the decision of the Chair be in favor of the member called to order, he or she may proceed. If otherwise, he or she shall not proceed, except by a majority of the members of the Council present.

SECTION 23 - ADDRESSES BY NON-MEMBERS

Citizens of the City of Huntington exercise their right to a democratically elected government by voting for the candidate of their choice.

Nevertheless, nonmembers may voice their opinions on issues during public hearings and Good and Welfare. The following rules shall apply:

- a. Speakers are limited to five minutes on any topic before the Council unless being questioned by a member of the Council. The chair may grant an extension of time to any speaker unless there is an objection to such extension by a member of the Council. If there is such an objection time can be extended only by a 2/3rds vote of the Council present and voting.
- b. Speakers are required to limit discussion to only those matters before Council during public hearings.
- c. Discussion of all relevant issues are permissible during Good and Welfare.

- d. No speaker may address the Council more than once on any specific topic without the majority of the Council present and voting, concurring.
- e. Speakers must comply with the rules of conduct stated in Section 19.

Speakers and members of the audience failing to comply with this section or otherwise disrupting the orderly proceedings of meetings are subject to immediate removal by the presiding officer and subject to prosecution pursuant to WV Code Section 61-6-19.

Any citizen may address City Council regarding the issues before it, upon second reading of an Ordinance after Council has discussed the issue and on any Resolution after Council has discussed the issue. Further, any citizen may address the Council on any issue under the Good and Welfare section of the Agenda. A sign-up sheet shall be provided and those persons whose names appear on the same shall be asked to speak first and in the order their names appear on said sheet for the item which their name appears. However, no person shall be prohibited from speaking for having failed to sign their name to the sign-up sheet.

#### SECTION 24 - ROBERT'S RULES OF ORDER

The proceedings of Council, except as otherwise provided in these rules, shall be governed by the edition of Robert's Rules of Order maintained and used in the office of the City Attorney.

#### SECTION 25 - CHAIRPERSON & VICE-CHAIRPERSON

At the first meeting of Council in July of each year, Council shall, by majority vote, elect one of its members as Chairperson, and one of its members as Vice-Chairperson, both of whom shall serve until the first meeting of Council at the next succeeding year, unless earlier removed by Council.

These Rules were adopted by Resolution of Council on March 23,

1992. (11 yeas; 0 nays). Copy of Resolution may be found in the Council file for March 23, 1992.

The last paragraph of Section 8 was added to the Rules by Resolution of Council on November 23, 1992. (9 yeas; 2 nays - Barrett, Zink). Copy of Resolution may be found in the Council file for November 23, 1992.

Under Section 1 - Meetings, A. Regular Meetings, the following sentence was added. "Council may designate the City Auditorium or such other appropriate and convenient location, as the Council Chambers for purposes of conducting its regular meetings and any special meetings that may be called pursuant to the provisions of Subsection B of this Section hereinafter set forth." This was adopted by Resolution of Council on February 22, 1993. ( 10 yeas; 0 nays; 1 absent - Alexander). Copy of Resolution may be found in the Council file for February 22, 1993.

The "Proposed Changes to the Huntington City Council Rules" were adopted on August 9, 1993 as indicated on the attached resolution. (10 yeas; 0 nays; 1 absent - Grubb)

Section 23 was amended on July 7, 1997 and has been incorporated into the Rules and Regulations. (10 yeas; 0 nays; 1 absent - Polan) See Council file, July 7, 1997.

Section 17 was amended on September 22, 1997 and has been incorporated into the Rules and Regulations. (9 yeas; 0 nays; 2 absent - Maass, Patterson) See Council file, September 22, 1997.

Section 23 was amended on September 22, 1997 and has been incorporated into the Rules and Regulations. (9 yeas; 0 nays; 2 absent - Maass, Patterson) See Council file, September 22, 1997.



STATE OF WEST VIRGINIA

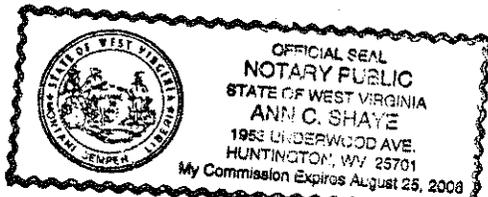
COUNTY OF CABELL

Came Jean Dean, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Mayor - City of Huntington to the best of my skill and judgment."

Signed

Jean Dean

Taken, subscribed and sworn to before me this 23rd day of June, 1997.



Ann C. Shaye  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Ann C. Shaye, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of City Clerk - City of Huntington, WV to the best of my skill and judgment."

Signed Ann C. Shaye

Taken, subscribed and sworn to before me this 16th day of October, 1991.

[Signature]  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 24th day of March 1995

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Robert Bailey, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed Bel Bailey

Taken, subscribed and sworn to before me this 23rd day of June, 1997.

Q. C. Sharpe  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

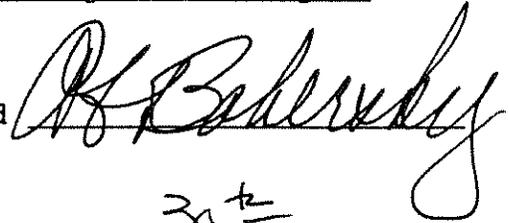
The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came A. F. Bobersky, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed



Taken, subscribed and sworn to before me this 30<sup>th</sup> day of July ~~June~~, 1997.



NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Philip E. Cline, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed Philip E. Cline

Taken, subscribed and sworn to before me this 23rd day of June, 1997.

Q. C. Shays  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came B. W. Ellis, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed

Burton W. Ellis

Taken, subscribed and sworn to before me this 23rd day of June, 1997.

[Signature]  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Frances Jackson, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed Frances Jackson

Taken, subscribed and sworn to before me this 23rd day of June, 1997.

Q. C. Shoyz  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

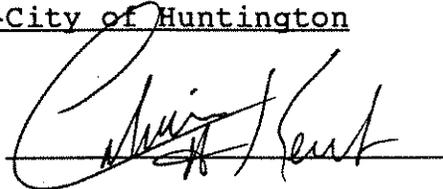
The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Calvin "Cal" Kent, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed



Taken, subscribed and sworn to before me this 30<sup>th</sup> day of July ~~June~~, 1997.



NOTARY PUBLIC,  
CABELL COUNTY, WV

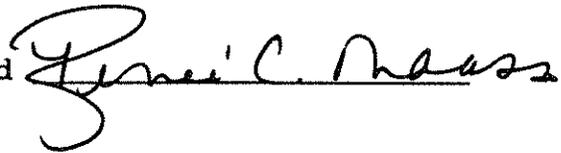
My Commission expires the 25th day of August 2006

STATE OF WEST VIRGINIA

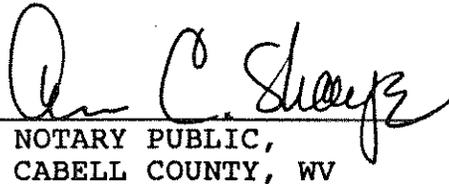
COUNTY OF CABELL

Came Renee Maass, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed



Taken, subscribed and sworn to before me this 23rd day of June, 1997.



NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Mary Neely, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed

Mary D. Neely

Taken, subscribed and sworn to before me this 23rd day of June, 1997.

Don C. Shaefer  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

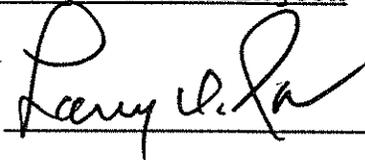
The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Larry D. Patterson, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed



Taken, subscribed and sworn to before me this 23rd day of June, 1997.



NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Chuck Polan, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

Signed



Taken, subscribed and sworn to before me this 23rd day of June, 1997.



NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

The term of office will begin on July 1, 1997. See attachment.

STATE OF WEST VIRGINIA

COUNTY OF CABELL

Came Jim Ritter, who being by the undersigned authority first duly sworn upon oath says the "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, and of the State of West Virginia, and that I will, in all respects, observe the provisions of the Charter, Ordinances, Resolutions, Regulations and Rules of the City of Huntington, and will faithfully discharge the duties of Councilmember -City of Huntington to the best of my skill and judgment."

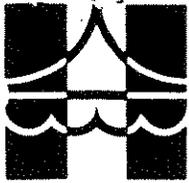
Signed James Ritter

Taken, subscribed and sworn to before me this 23rd day of June, 1997.

Don C. Shays  
NOTARY PUBLIC,  
CABELL COUNTY, WV

My Commission expires the 25th day of August 2006

The term of office will begin on July 1, 1997. See attachment.



## Memorandum

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To: Ann Shaye, City Clerk

CC: Councilman Larry Patterson  
Mayor Jean Dean

From: Jendonnae L. Houdyschell   
Acting City Attorney

Date: June 17, 1997

Subject: Legal Opinion on Swearing In of Council Members

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Please be advised that West Virginia Code §8-5-8 states as follows:

§8-5-8. Oath of Office.

"Every person elected or appointed to an office in any municipality shall unless otherwise provided in the charter thereof, within twenty days after his election or appointment and before he shall enter upon the duties of his office, take and subscribe to the oath of office prescribed for district officer, which may be done before any person authorized by law to administer oaths, or before the mayor or recorded of such municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder of the municipality, and a certified copy of such oath and certificate shall be filed and recorded in the office of the clerk of the county court [county commission] of the county in which the municipality or the major portion of the territory thereof is located."

Clearly, the Code requires that the oath be taken within twenty (20) days after his election and before he shall enter into the duties of his office. Under the Code section and based upon the case of Daughtery v. Town of Mabscott, 131 W.Va. 500, 48 S.E.2d 342 (1948) and State ex rel. Morrison v. Freeland, 139 W.Va. 327, 81 S.E.2d 685 (1954), the elected officers are required to have taken their oath of office by July 2, 1997 and before they are to take office. Clearly, it is the intent of the statute that at any time during that twenty (20) day period after the election results, the person may be sworn in and take their oath of office. Obviously, their office would not begin to run until July 1, but since all of this must be done prior to their taking office, the only way it could be facilitated is to have a swearing in prior to July 1, 1997.

JLH:tir

## OFFICERS AND EMPLOYEES GENERALLY

## § 8-5-9

## PART V. OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES.

## § 8-5-8. Oath of office.

Every person elected or appointed to an office in any municipality shall, unless otherwise provided in the charter thereof, within twenty days after his election or appointment and before he shall enter upon the duties of his office, take and subscribe to the oath of office prescribed for district officers, which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder of the municipality, and a certified copy of such oath and certificate shall be filed and recorded in the office of the clerk of the county court [county commission] of the county in which the municipality or the major portion of the territory thereof is located. (Code 1868, c. 47, § 18; 1882, c. 92, § 18; Code 1923, c. 47, § 18; 1969, c. 86.)

*Editor's notes.* — The bracketed words were inserted by the editor. See W. Va. Const., art. IX, § 9.

*Oath an essential requirement.* — The taking of the requisite oath, after a person has been appointed or has been declared to have been elected to a public office, is the essential requirement to his qualification for the office. *Hertzog v. Fox*, 141 W. Va. 849, 93 S.E.2d 239 (1956).

*But filing thereof is merely incidental to qualification.* — The requirement that a person file the oath in the manner provided by this section is merely incidental to his qualification. *Hertzog v. Fox*, 141 W. Va. 849, 93 S.E.2d 239 (1956).

*And failure to file oath and certificate does not deprive one of office.* — Under this section a person elected to a municipal office qualifies for such office when he takes and subscribes the oath of office within twenty days after his election has been ascertained and declared; and his failure to file such oath and the certificate of the person administering it in the office of the recorder of the municipality, and to file a certified copy of such oath and certificate within twenty days after his election has been ascertained and declared, does not deprive him of his right to, or create a vacancy in,

such office. *Hertzog v. Fox*, 141 W. Va. 849, 93 S.E.2d 239 (1956).

*When twenty-day period commences running.* — Under the provisions of this section, a municipal officer is to be regarded as "elected" when returns of the election have been duly canvassed to that effect and the result declared by order of the body authorized by law to do so, and not before, and the twenty-day period within which officer must take oath of office commences running at such time. *Daugherty v. Town of Mabacott*, 131 W. Va. 500, 48 S.E.2d 342 (1948); *State ex rel. Morrison v. Freeland*, 139 W. Va. 327, 81 S.E.2d 685 (1954).

*Failure to take oath within twenty days.* — The provision in this section, respecting the time within which a person elected or appointed to a municipal office shall take and subscribe the oath of office, is only directory, and although the taking and subscribing of such oath must be accomplished before a person may assume the duties of the office to which he was duly elected or appointed, failure to take and subscribe the oath within the twenty-day period proscribed by this section will not, in itself, be sufficient to cause a forfeiture of that office. 46 Op. Att'y Gen. 233 (1955).

## § 8-5-9. Terms of office.

Except as otherwise provided in the charter of any municipality, the terms of all officers elected after the first election in municipalities holding biennial elections shall commence on the first day of July following their election and shall be for two years, and in municipalities holding quadrennial elections the terms of all elected officers shall commence on the first day of July following their election and shall be for four years.

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ARTICLE 169  
Sanitary Board

- |        |  |        |  |
|--------|--|--------|--|
| 169.01 | Creation; members.   | 169.03 | Rules and regulations.                 |
| 169.02 | Sewerage collection system supervision; expenditures; revenue bonds. | 169.04 | Compensation; Secretary and Treasurer. |

CROSS REFERENCES

- Composition of Board - see W. Va. Code 16-13-18  
 Publication of financial statement - see W. Va. Code 16-13-18a  
 Powers and duties - see W. Va. Code 16-13-3 et seq.

**169.01 CREATION; MEMBERS.**

There is hereby created a Sanitary Board to consist of three members. The Mayor is hereby designated as a member of the Board, and the Mayor shall select the two other members of the Board subject to approval by Council. The persons so selected and the terms of their respective offices and all other matters relating thereto shall be in accordance with the provisions of State law. (Ord. 3-11-35)

**169.02 SEWERAGE COLLECTION SYSTEM SUPERVISION; EXPENDITURES; REVENUE BONDS.**

The custody, administration, operation and maintenance of any sewerage collection system or other works that may be constructed or required under the provisions of law and of this article shall be under the supervision and control of the Sanitary Board. All necessary preliminary expense actually incurred by the Board in the making of surveys, estimates of costs and revenues, employment of engineers, attorneys or other employees, the giving of notices, taking of options, and all other expense of whatsoever nature necessary to be paid prior to the issue and delivery of the revenue bonds, shall be paid out of the General Fund of the City not otherwise appropriated, in the manner provided in West Virginia Code 16-13-4; provided, however, that the funds of the City from which such payments are made shall be fully reimbursed and repaid by the Board out of the first proceeds of the sale of revenue bonds. (Ord. 3-11-35)

**169.03 RULES AND REGULATIONS.**

The further regulation and control of the Sanitary Board, except in so far as the Board is given authority by law to organize itself and establish its own by-laws, rules and regulations, is hereby reserved and may be set forth from time to time by Council by proper ordinance, within the terms of State law. (Ord. 3-11-35)

## 169.04 COMPENSATION; SECRETARY AND TREASURER.

Until the further order of Council the members of the Sanitary Board shall serve without compensation. The Board is hereby directed to select a Secretary and Treasurer pursuant to West Virginia Code 16-13-18. The bond of the Treasurer is hereby fixed at five thousand dollars (\$5,000). Such bond shall be given by a recognized surety company, and the cost of the premium thereof shall be paid by the Board as part of its expenses.

(Ord. 3-11-35)



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

PETITION OF SANITARY BOARD

The Sanitary Board of The City of Huntington (the "City") hereby petitions the Council of the City to enact an ordinance directing that sewer revenue bonds of the City be issued pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed \$3,039,895 for the purpose of financing the costs of acquisition and construction of additions, betterments and improvements to the existing public sewerage system of the City, together with all necessary appurtenances, and the costs of issuance and related costs.

Directed this 13th day of November, 1995.

SANITARY BOARD OF THE CITY OF  
HUNTINGTON



\_\_\_\_\_  
Chairman

10/23/97  
435500/94001



AN ORDINANCE TO AMEND, MODIFY AND RE-ENACT SECTIONS 29-15 AND 29-16 OF THE CODE OF THE CITY OF HUNTINGTON, RELATING TO SCHEDULE OF RATES AND MINIMUM CHARGES FOR SEWER SERVICE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that Sections 29-15 and 29-16 of the Code of the City of Huntington, 1964, as amended, be amended, modified and re-enacted to read as follows:

Sec. 29-15. Same - Schedule of rates.

The service charge for any person, firm or corporation situated within or outside the corporate limits of the city, having any connection with the city's public sanitary sewage system and discharging sewage, industrial wastes or other liquids into such system, shall be based upon the quantity of water used on or in such premises as the same is measured by the Huntington Water Corporation meters then in use, and shall be charged per quarter year or monthly at the following rates:

For customers billed on a quarterly basis:

First 900 cu. ft. per quarter-----	\$1.75 per 100 cu. ft.
Next 59,100 cu. ft. per quarter-----	1.20 per 100 cu. ft.
Next 2,940,000 cu. ft. per quarter-----	.91 per 100 cu. ft.
Over 3,000,000 cu. ft. per quarter-----	.62 per 100 cu. ft.

For customers billed on a monthly basis:

First 300 cu. ft. per month-----	\$1.75 per 100 cu. ft.
Next 19,700 cu. ft. per month-----	1.20 per 100 cu. ft.
Next 980,000 cu. ft. per month-----	.91 per 100 cu. ft.
Over 1,000,000 cu. ft. per month-----	.62 per 100 cu. ft.

Sec. 29-16. Same - Minimum charges.

Notwithstanding the rates set forth in the preceding section, the minimum charges for sewer service shall be two dollars per month or six dollars per quarter.

Sewage service rates and charges shall become effective forty-five (45) days from passage.

SPONSORED BY: William

APPROVED AS TO FORM:

*CJA*

*1st Read 5-29-84 - Ord Adv.*

ADOPTED:

*2nd Read 6-11-84 - Tabled.*  
*1st Read 7-9-84 Ord Adv.*  
*2nd Read 7-23-84 - Adopted.*



FILE KK-34 16349	Marshall Univ.	Printing of view- books	7-17-84/2:45 PM
FILE HC-42 3418	Hunt. St. Hosp	Quarterly food order	7-18-84/2:00 PM
1	Barboursville Veterans Home	Contract to provide full service & main- tenance on all elevators	7-18-84/2:00 Pm
FILE CC-43 11994	Marshall Univ.	Contract to ReConst- ruct handicapped ramp to Buskirk Hall	7-17-84/2:30 PM

No bids will be considered unless submitted on forms prescribed by the Purchasing Division. Specifications available upon application.  
**GLENN R. CUMMINGS, DIRECTOR**  
 LH-902 7-5, 12, 84

**NOTICE**

**LEGAL**

Notice is hereby given that on the 23 day of JULY, 1984 at the hour of 7:30 p.m., or as soon thereafter as the matter can be heard, the Council of the City of Huntington, West Virginia, at the Council Chambers, in the City Hall, Huntington, West Virginia, proposes to finally vote on the adoption of an Ordinance, the subject matter of which is as follows:

**AN ORDINANCE TO AMEND, MODIFY AND RE-ENACT SECTION 29-15 AND 29-16 OF THE CODE OF THE CITY OF HUNTINGTON, RELATING TO SCHEDULE OF RATES AND MINIMUM CHARGES FOR SEWER SERVICE.**

**SCHEDULE OF RATES.**  
 For customers billed on a quarterly basis:  
 First 900 cu. ft. per quarter ..... \$1.75 per 100 cu. ft.  
 Next 59,100 cu. ft. per quarter ..... 1.20 per 100 cu. ft.  
 Next 2,940,000 cu. ft. per quarter ..... .91 per 100 cu. ft.  
 Over 3,000,000 cu. ft. per quarter ..... .62 per 100 cu. ft.  
 For customers billed on a monthly basis:  
 First 300 cu. ft. per month ..... \$1.75 per 100 cu. ft.  
 Next 19,700 cu. ft. per month ..... 1.20 per 100 cu. ft.  
 Next 960,000 cu. ft. per month ..... .91 per 100 cu. ft.  
 Over 1,000,000 cu. ft. per month ..... .62 per 100 cu. ft.  
 Sec. 29-16. Same - Minimum charges.

Notwithstanding the rates set forth in the preceding section, the minimum charges for sewer service shall be two dollars per month or six dollars per quarter.

Sewage service rates and charges shall become effective forty-five (45) days from passage.

Said Ordinance is filed in the Office of the Clerk of said City, in the City Hall, Huntington, West Virginia, where the same may be inspected by the public, and interested parties may appear at the meeting and be heard with respect to the proposed Ordinance.

Dated this 10TH day of 1984.

**MARY L. NEELY,**  
 Clerk of the City  
 of Huntington, W.Va.

LH-945 7-12, 19, 84



S Y N O P S I S  
CITY COUNCIL  
JULY 23, 1984

The Invocation was given by Mr. Leon Oxley.

A moment of silence was observed in memory of Capt. David Bias of the Huntington Fire Department, who lost his life in an accident over the past weekend.

The Pledge of Allegiance was led by Councilman Huey Perry.

All Members of Council were present with the exception of Councilman Robert P. Alexander. (Councilman Smith announced that Councilman Alexander was "in Ft. Knox, Ky., serving his country for the next three days.")

A Plaque with a Key to the City and a Proclamation proclaiming the week of July 23, 1984, as "Chief H. H. Johnson Week" were presented to Chief Johnson, who will be retiring on August 4, 1984, after serving 31 years on the Huntington Fire Department.

Lt. Alan Cremeans and Lt. J. L. Damron of the Fire Department presented a plaque to Chief Johnson from the Huntington Firefighters.

The Synopsis of the last Regular Meeting was approved as received.

Reports - City Manager

(a) Lease of Computer Terminal Equipment for Police Department. The agreements with Benchmark Computer Systems for the total monthly lease and maintenance amount of \$315, were approved, as recommended by the City Manager.

(b) Approval of Community Development Interim Loan Program. Tabled until the next Regular Meeting.

Mayor Williams spoke regarding the recent disturbance problems in downtown Huntington, saying that the laws of the City will be enforced, and a special effort will be made to deal with any problems in the City.

Mayor Williams congratulated everyone involved with the Miller Classic Boat Races and the Kart Races, recently held in Huntington, stating they were two excellent events.

✓  
Second Reading of an Ordinance re: AMENDING, MODIFYING, AND RE-ENACTING SECTIONS 29-15 AND 29-16 OF THE CODE OF THE CITY OF HUNTINGTON, RELATING TO SCHEDULE OF RATES AND MINIMUM CHARGES FOR SEWER SERVICE. A motion to table for 30 days failed with a vote of four (4) nays (Perry, Rahal, Thacker, Williams), and two (2) yeas (Malott, Smith). An amendment was offered by Councilman Smith that "This Ordinance would be in force for one year and during that time an outside consultant be hired to analyze the secondary treatment plant to see if there is a cheaper and better way to operate this plant. The time-frame for the consultant's study of the secondary treatment plant would be for the next nine months immediately after the adoption of this Ordinance. After this nine-month time-frame, this Council would act upon the recommendations of this consultant's report." ("This would allow this Council to act upon its findings before its term is up.") This was amended to delete the nine-month time frame; however, it failed with a vote of three (3) yeas (Smith, Thacker, Williams), and three (3) nays (Malott, Perry, Rahal). Motion to adopt original Ordinance passed with a vote of four (4) yeas (Perry, Rahal, Thacker, Williams), and two (2) nays (Malott, Smith).

Synopsis, City Council, July 23, 1984 (2)

Second Reading of an Ordinance re: AMENDING, MODIFYING, AND RE-ENACTING CERTAIN PORTIONS OF THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, RELATED TO HOME OCCUPATIONS. Adopted.

Second Reading of an Ordinance re: AMENDING, MODIFYING AND RE-ENACTING SECTION 22-204 OF THE CODE OF THE CITY OF HUNTINGTON, RELATING TO THE TIME PERIOD FOR PARKING METERS ON THE NORTH SIDE OF FIFTH AVENUE FROM EIGHTH STREET TO NINTH STREET. Adopted.

First Reading of an Ordinance re: AMENDING, MODIFYING AND RE-ENACTING THE CODE OF THE CITY OF HUNTINGTON, 1964, AS AMENDED, BY ADDING THERETO A NEW SECTION TO BE KNOWN AS SECTION 2-1.1 RELATING TO SIGNATURES ON LEGAL DOCUMENTS. Ordered advertised.

First Reading of an Ordinance re: AMENDING AND MODIFYING THE CODE OF THE CITY OF HUNTINGTON, 1964, AS AMENDED, BY ADDING THERETO UNDER SCHEDULE I OF SECTION 22-199, A DESIGNATION THAT FOURTH AVENUE BE A ONE-WAY STREET FROM 30TH STREET TO 31ST STREET IN AN EASTERLY DIRECTION. Ordered advertised.

First Reading of an Ordinance re: AMENDING, MODIFYING AND RE-ENACTING THE CODE OF THE CITY OF HUNTINGTON, 1964, SECTION 22-203, TO PROVIDE FOR TWO-HOUR PARKING ON ELM STREET FROM 13TH AVENUE TO 14TH AVENUE. Ordered advertised.

First Reading of an Ordinance re: AMENDING THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, 1960, AND THE ZONE MAP ATTACHED THERETO AS A PART THEREOF, BY ZONING TO B-1, LOCAL BUSINESS, LOT 22, PARCEL 296, MAP 10, HIGHLAWN SUBDIVISION, ON THE SOUTH SIDE OF THIRD AVENUE BETWEEN ELAINE COURT AND 25TH STREET. THE PROPERTY IS PRESENTLY ZONED R-4, TWO-FAMILY RESIDENTIAL. Ordered advertised.

Resolution re: AUTHORIZING APPLICATION TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR AN URBAN DEVELOPMENT ACTION GRANT. Tabled until July 30, 1984, 4 p.m. (Special Call Meeting.)

Resolution re: AUTHORIZING AND DIRECTING THE CITY MANAGER TO STUDY THE FEASIBILITY OF THE SALE OF THE CABELL-HUNTINGTON HOSPITAL. Motion to table failed with a vote of two (2) yeas (Rahal, Smith), and four (4) nays (Malott, Perry, Thacker, Williams). Motion to adopt failed with a vote of three (3) yeas (Perry, Thacker, Williams), and three (3) nays (Malott, Rahal, Smith).

Resolution re: AUTHORIZING THE CITY MANAGER TO HIRE A CHIEF OF THE FIRE DEPARTMENT. Adopted.

Resolution re: AUTHORIZING THE CITY MANAGER TO HIRE TWO (2) FIREMEN. Adopted.

#### GOOD AND WELFARE

Mr. Thomas McCullough, 1739 Doulton Avenue, complimented everyone involved in alleviating the condition adjacent to his property. (Complaint made at last Council Meeting.)

Mr. Charles W. Clifton, 196 R. Oney Avenue, complained of the trash all along Oney Avenue.

Synopsis, City Council, July 23, 1984 (3)

Mr. Tom McCallister, 317 Washington Avenue, asked Council to adjourn, call a Special Meeting, come back in and adopt a Resolution calling for the framing of a New Charter.

The Mayor replied that there is "a vehicle through which an election can be called."

Councilman Rahal stated that many people have said they would like to vote on a Charter change. He further stated that the citizens should be allowed to decide what form of government they want.

Assistant Mayor Thacker stated he is in favor of "open work sessions", where the recommendations of the Charter Review Committee are discussed, and of putting the "consensus" changes on the ballot, rather than having to go through the process of three elections. He suggested that Council begin looking at dates to have "open work sessions" on the Charter change.

Capt. Earl Legg, 798 Roby Road, a Capt. on the Huntington Fire Department, asked Council for a waiver of the residency requirement for City employees. He said that in the Huntington Fire Department Rules and Regulations, there is a copy of the West Virginia State Civil Service law which states that after a fireman has served 20 years with the City of Huntington Fire Department, he can reside anywhere in Cabell and Wayne Counties. He said that he was under the impression that this was still in effect and bought a piece of property in Wayne County, but since then, had talked with the City Manager and asked for a letter of permission to move. Capt. Legg stated that the City Manager told him he had been informed by the Legal Department that the law had been changed regarding the 20 years of service, 15 years ago. He said neither he nor his supervisors were aware that any change had been made, inasmuch as the Rules and Regulations still contained the 20-year proviso, stating that Rule 12 says that all firefighters must live in the City, however, Rule 20 states that after serving 20 consecutive years, you may reside in the Counties in which the municipality is situated. He, therefore, is petitioning Council, on a financial hardship basis, for a waiver of the residency requirement.

The Mayor stated that Council would take the matter under advisement.

Mr. Jim Williams, 227 Forest Road, called Council's attention to the traffic situation at 1st Street and 4th Avenue, saying it was extremely dangerous.

The City Manager replied that a traffic signal is to be installed at that intersection within the next several months.

Councilman Rahal said he was of the opinion that parking should be eliminated for a distance of about 100 feet from the intersection.

The Mayor asked the City Manager to check into the situation and report back to Council as soon as possible.

Mr. Jim Williams further stated that he felt the City should look into the purchase of a stump remover, because the stumps that are left after a tree is cut down are oftentimes dangerous.

Mr. Williams said that as President of the Transit Authority, he wanted to report a problem at 9th Street and 4th Avenue of people parking in the Bus Stop, sometimes parking there for hours. He felt those cars should be towed.

The Mayor asked the City Manager to check into this and attempt to resolve the problem.

Synopsis, City Council, July 23, 1984 (4)

Mrs. Pauline Hughes, 334 - 34th Street, thanked the City for having the trash on 8th Avenue cleaned up; however, she observed a truck there "just the other day" unloading trash. Mrs. Hughes said she believed "No Dumping" signs should be posted.

Mrs. Judy Bradbury, 6023 Gideon Road, spoke of the "problems on the streets of downtown Huntington". She said she is now afraid of the streets. She said troublemakers should be kept off the streets.

Mayor Williams said he felt the problems are "isolated in nature" and as a whole he felt we have a very safe City.

Mrs. Bradbury said that the troublemakers are aware of the time the Police Department has a shift change.

Councilman Rahal stated he had heard it took the Police Department 30 to 40 minutes to respond to the call on the Saturday night in question.

Mrs. Bradbury stated the Police Department was contacted and informed there was a hostile gathering and the participants had weapons, but no response was made.

The City Manager said he was not aware of this, but he would check on the response time.

The City Attorney stated that there was a law against carrying weapons on the street - both on the State and City books.

Mr. Charles Clifton inquired if the City had a curfew law, to which the City Attorney replied in the affirmative, but stated that most Courts have held it invalid.

Meeting adjourned.



**NOTICE**

**THE CITY OF  
HUNTINGTON  
NOTICE OF  
PUBLIC HEARING  
ON SEWER REVENUE  
BOND ORDINANCE**

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of The City of Huntington to be held on December 11, 1995, at 7:30 p.m. in the Council chambers at the Huntington City Hall, 800 Fifth Avenue, Huntington, West Virginia, and at such hearing any person interested may appear before the Council and present protests, and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND**

**REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

The above-entitled Ordinance was adopted by the Council of The City of Huntington on November 27, 1995.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City of Huntington contemplates the issuance of the Bonds described in said Ordinance. The proceeds of the Bonds will be used to provide permanent financing of the costs of acquisition and construction of additions, betterments and improvements to the existing public sewerage facilities of The City of Huntington. The Bonds are payable solely from revenues to be derived from the ownership and operation of the sewerage system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file with the Council at the office of the City Clerk of The City of Huntington for review by interested parties during regular office hours.

Following said public hearing, the Council intends to enact said Ordinance upon final reading.

Dated: November 30, 1995.

**JEAN DEAN**  
Mayor

LM-1903 11-30;12-7-95

# AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,  
COUNTY OF CABELL, TO-WIT:

I, Connie Rappold being first duly sworn, depose and say that I am Legal Clerk for The Herald-Dispatch, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, an independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for and on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH 1903 was duly published in

The Herald-Dispatch

one time, once a week for 2 successive weeks, commencing with its issue of the 30th day of November, 19 95, and ending with the issue of the 7th day of December, 19 95, and was posted at the East Door of the Cabell

County Courthouse on the 30th day of November, 19 95: that said legal advertisement was published on the following dates:

November 30; December 7, 1995

; that the cost of publishing said annexed advertisement as aforesaid was 144.17; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and

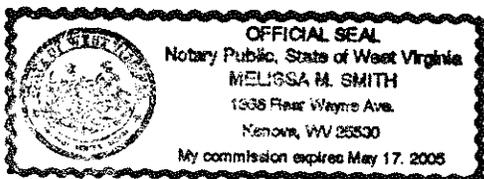
that such newspaper is circulated to the general public at a definite price or consideration, that such newspaper on each date published consists of not less that four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 11<sup>th</sup> day of Dec, 19 95.

My commission expires 05-17-05

Melissa M Smith



Notary Public  
Cabell County  
West Virginia  
10M Form A-135 (867H)



RECORD OF PROCEEDINGS OF THE CITY COUNCIL, Huntington, W. Va.

CASIO & MARKER INC., SPENCER, W. VA. BE GREEN NO. 99079-93 REGULAR Session Held

13TH

Day of NOVEMBER

19 95

INVOCATION AND PLEDGE

INVOCATION AND PLEDGE

The Invocation was given by Councilman Greg Hawkins.

The Pledge of Allegiance to the Flag was led by Councilmember Betty Barrett.

ROLL CALL

ROLL CALL

The following Members of Council were present for this Meeting:

- Dallan Fields, Chairperson
- Robert P. Alexander
- Betty Barrett
- Garry D. Black
- Burlen W. Ellis
- Nolan L. Grubb
- Greg Hawkins
- Larry D. Patterson
- James Ritter
- Bill Taylor
- William D. Toney

Also present were: Mayor Jean Dean  
 Mr. Fred Staker, City Attorney  
 Mrs. Ann Shaye, City Clerk

SYNOPSIS

SYNOPSIS

Motion by Councilman Alexander, seconded by Councilman Patterson, to approve the Synopsis as submitted. Motion carried unanimously.

REPORTS OF THE MAYOR

REPORTS OF THE MAYOR

Mayor Dean said that she had no special reports.

2ND READ ORD RE: AREA OF LARKSPUR DRIVE BE MADE A PART OF MUNICIPAL ELECTION DISTRICT #9

Second Reading of an Ordinance re: AN ORDINANCE OF COUNCIL PROVIDING THAT THE GEOGRAPHICAL AREA INCLUDED IN THE LIMITS OF THE CITY OF HUNTINGTON BY MINOR BOUNDARY ADJUSTMENT BY ORDER OF THE COUNTY COMMISSION OF CABELL COUNTY, WEST VIRGINIA, ENTERED ON THE 10TH DAY OF OCTOBER, 1995, SAID AREA BEING REFERRED TO AS 111 LARKSPUR DRIVE AND 113 LARKSPUR DRIVE LOCATED IN GUYANDOTTE DISTRICT, CABELL COUNTY, WEST VIRGINIA, BE MADE A PART OF MUNICIPAL ELECTION DISTRICT #9 IN THE CITY OF HUNTINGTON.

Motion by Councilman Hawkins, seconded by Councilman Alexander, to adopt this Ordinance. No vote taken at this time.

Mayor Dean explained that these two properties have already been annexed into the City. This ordinance will assign them to the correct Council election district.

Motion to adopt this ordinance carried unanimously.

2ND READ ORD RE: APPROVING BONDS BY THE DEVELOPMENT AUTHORITY.

Second Reading of an Ordinance re: AN ORDINANCE APPROVING THE ISSUANCE OF CERTAIN BONDS BY THE HUNTINGTON MUNICIPAL DEVELOPMENT AUTHORITY; AUTHORIZING THE EXECUTION AND DELIVERY OF THE GROUND LEASE AND THE LEASE AGREEMENT; APPROVING CERTAIN OTHER DOCUMENTS RELATED TO THE TRANSACTION AND CERTAIN OTHER MATTERS RELATED THERETO.

Motion by Councilmember Barrett, seconded by Councilman Ellis, to adopt this Ordinance. No vote taken at this time.

Mayor Dean explained that this is a continuation of the plans for the development, westward, of the Harris Riverfront Park. She advised that Miss Samee Gee, bond counsel, was in the audience and would be happy to answer any questions.

Miss Samee Gee, bond counsel with the firm of Jackson & Kelly in Charleston, WV told Council members that this would authorize the City to enter into a lease agreement with the Huntington Municipal Development Authority. Bonds will then be issued in the amount of \$1,750,000; the proceeds will be available to the City as its matching share of the project. The leases, under state law, could be terminated upon thirty days' notice. The funding for the leases will come from the Coal Severance tax revenues. If these would not be available the Hotel-Motel tax (50% monies) would be used.

Chairman Fields asked the Mayor if she felt the Coal Severance revenue monies and the Hotel-Motel taxes would be sufficient to retire the bonds.

Mayor Dean replied she was sure they would.

Councilman Black asked if this is the original funding plan.

Mayor Dean said it is a version of it; it had been put into place during the former administration.

Councilman Black said he wasn't aware that the City would be using General Fund proceeds to fund the bond issue.

Miss Gee explained that the City would be using those monies to pay the interest on the bonds.

Motion to adopt this ordinance carried unanimously.

First Reading of an Ordinance re: AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE CODIFIED ORDINANCES.

Motion by Councilman Grubb, seconded by Councilman Ellis, to postpone the ordinance until the next regular meeting on November 27, 1995. Motion carried unanimously.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING PARTICIPATION AND RATIFYING PRIOR PARTICIPATION OF THE CITY OF HUNTINGTON, WEST VIRGINIA, WITH THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, FOR THE IMPLEMENTATION OF THE HUNTINGTON DAVID W. HARRIS RIVERFRONT PARK EXPANSION PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF HUNTINGTON, WEST VIRGINIA, TO EXECUTE, ACCEPT, OR OTHERWISE APPROVE ALL DOCUMENTS, AGREEMENTS, INSTRUMENTS, OR OTHER NECESSARY PAPERS REQUIRED BY THE DEPARTMENT OF THE ARMY FOR PARTICIPATION IN THE IMPLEMENTATION OF THE HUNTINGTON DAVID W. HARRIS RIVERFRONT PARK PROJECT.

Mayor Dean explained that this will allow her to sign all of the necessary documents for the expansion of the Harris Riverfront Park.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE LEASE OF A HIGH VOLUME ELECTRONIC PLAIN PAPER COPIER FOR THIRTY-SIX (36) MONTHS, RENEWABLE ANNUALLY.

Mayor Dean said the City received a total of eleven proposals for the main copying machine in City Hall. A number of items, however, require review. Further, she said it is believed that the City can piggyback onto the state contract. There are three companies that are part of the state contract. At the next meeting, a decision will have been reached as to which company will provide the best arrangement for the City.

Councilman Grubb said the lease vs. purchase price appears to be substantial on some of the quotations. He said he assumed the Purchasing Department is reviewing this in detail.

Mayor Dean said all of the proposals are currently under review.

THIS ORDINANCE WAS ADVERTISED.

✓ First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The Chair asked the City Clerk to correct, for the records, the amount that was read in the title of the ordinance. The correct figure should have been \$3,000,000.

Mayor Dean explained that this is in connection with the financing of the Inwood-Shockey sewer project. The bond counsel, in this case, will be the firm of Steptoe & Johnson from Clarksburg, West Virginia. She deferred to Mr. Vince Collins, bond counsel, who was in the audience.

Mr. Collins stated, for clarification purposes, that the amount his firm put in was an amount not-to-exceed \$4,000,000. He thought the Sanitary Board had approved this amount. That does not mean, necessarily, that the bond issue will be \$4,000,000. The actual amount will in all likelihood be \$3,000,000 or slightly under. He said it would be up to Council to determine the maximum amount. He suggested allowing a margin. The ordinance authorizes the City to issue bonds to the West Virginia SRF Program. It will be at a rate of 3% for twenty years.

The Chairman, for the record, asked if this were not generally referred to as the Inwood-Shockey project.

2ND READ ORD RE:  
APPROVING BONDS BY THE  
DEVELOPMENT AUTHORITY -  
CONT.

1ST READ ORD RE:  
TO APPROVE CURRENT  
REPLACEMENT PAGES TO  
THE CODIFIED ORDINANCES

1ST READ ORD RE:  
PARTICIPATION IN IMPL-  
EMENTATION OF DAVID W.  
HARRIS RIVERFRONT PARK  
PROJECT.

1ST READ ORD RE:  
LEASE FOR COPIER FOR  
CITY HALL

1ST READ ORD RE:  
BOND ISSUE FOR IMPROVEMEN-  
TO PUBLIC SEWERAGE SYSTEM  
IN CONNECTION WITH THE  
FINANCING OF THE INWOOD  
SHOCKEY SEWER PROJECT

1ST READ ORD RE:  
BOND ISSUE FOR IMPROVE-  
MENTS TO PUBLIC SEWERAGE  
SYSTEM IN CONNECTION  
WITH THE FINANCING OF  
THE INWOOD/SHOCKEY  
SEWER PROJECT- CONT.

Mayor Dean confirmed that it is. She apologized to Mr. Collins, adding that she had not informed him that the resolution that was adopted was in the amount of \$3,000,000 rather than the \$4,000,000 that had originally been suggested. This was due to the fact that the out-of-city residents' properties were removed from the plan.

Mr. Collins said he would make the correction when he returned to his office and asked that Council members correct the \$4,000,000 (on the ordinance) to \$3,000,000.

Councilman Hawkins asked if it was correct that the people outside the City limits would require another million dollars.

Mayor Dean said it would be almost that much.

Mr. Hawkins questioned about bringing the people into the City.

Mayor Dean replied that she would be happy to bring them into the City and provide sewer service if they wished to; however, she didn't know if they wanted to do this at this point in time.

Councilman Black asked if there has been any projected revenue yield on the additional \$1,000,000.

Mayor Dean said she would not have that figure presently but that it could be given to him.

Mr. Black asked, in the interest of cleaning up the neighborhood, if it would not be wise to go ahead and include those citizens if the return on the investment were favorable.

Mayor Dean said that one of the reasons would be the fact that just recently it had been agreed to extend sewer service to new developments that can be annexed into the City. This would be going in the face of that policy if the City were to allow people to have the sewer service without becoming a part of the City of Huntington.

Mr. Black asked if there were any locations outside the City that have the service of the Sanitary Board.

Mayor Dean advised that the City has been asked to take over the Monel Park's Public Service District. However, this has not yet taken place.

Mr. Black then said that it would be correct to say that there are no other out-of-city properties that are currently on the Huntington Sanitary Board system.

Mayor Dean said she hesitated to say that absolutely there were none, but that to her knowledge there were none. She said she understood that there had been a verbal commitment for Ashland Coal to come into the City. However, this never took place.

Mr. Black asked if the information could be provided as to the economic feasibility of extending the sewer to those residents in the county.

Councilman Hawkins asked how many homes were involved in this project.

Mayor Dean answered between 160 and 180.

Councilmember Barrett asked if it would not be correct to say that the City would be happy to accept the sewage if the county wanted to build a sewer in that area.

Mayor Dean answered that there would be no problem since there is the capacity to accept more sewage.

Councilman Alexander asked if this would be the only time the City would be able to get such a good interest rate.

Mr. Collins said the SRF Program is a federally funded program. If this program became a victim of budget cutting then it could be eliminated or reduced. However, he did not see any immediate problem.

Dr. Alexander asked if it would be advisable to get the maximum amount of money and then use it for another project, if needed.

Mr. Collins said there has to be a project approved by the Public Service Commission before the City can receive any monies. However, there could be another SRF project three months from now. With respect to this ordinance he explained that it is for a not-to-exceed amount. If Council would like to authorize more, this would be the time to do it. If this were adopted with a \$3,000,000 not-to-exceed figure and it was determined, at a later date, to raise that figure it could not be done without starting over on the procedure.

Councilman Black asked what would be wrong with using the \$4,000,000 figure. This would permit some leeway

Mayor Dean said there is another Sanitary Board meeting next week and that she would be happy to place it on the agenda. At this point, the resolution that the board passed was for \$3,000,000.

Chairman Fields said he would rather see a gravity flow system rather than a grinder pump system and that if the additional monies would help with that he would like to see the figure at \$4,000,000.

RECORD OF PROCEEDINGS OF THE CITY COUNCIL, Huntington, W. Va.

CASIO & HARRIS INC., SPENCER, W. VA. SE-ORDER NO. 99079-93

REGULAR Session Held

13TH

Day of NOVEMBER

19 05

Mayor Dean said that a gravity flow system would be considerably more expensive. There will be a report by a third party that will be forthcoming and their comments about the different systems will be included.

Chairman Fields said he had seen some cost analyses by another engineer, in the southern part of the state, who indicated that the cost for a gravity flow system would be less than what had been estimated for the grinder pump system.

✓ Councilman Patterson suggested increasing the amount to \$4,000,000.

Motion by Councilman Grubb, seconded by Councilman Black, to amend to insure that the reading be for issuance by the City of not more than \$4,000,000 in aggregate principal amount of sewer revenue bonds. No vote taken at this time.

Councilman Ellis said he would like to know how much this project is going to cost the citizens in Huntington.

Councilman Grubb said he has been the Public Service Commission's recommendation that the cost to the residents served should be nothing.

Motion to amend carried ten (10) yeas;  
one (1) nay - Ellis.

Councilman Ellis asked once again who would be paying for this.

Councilman Alexander commented that, at this time, there would be no assessments.

Councilman Black said that although there are no assessments there is a cost associated with it. The board has \$4,000,000 in excess funds and these funds can be used to pay for the sewer or they could be used as a refund to the citizens in Huntington if the sewer isn't constructed.

Councilmember Barrett said if the board didn't have the surplus there would be a considerable increase in rates.

Councilman Ritter asked if there had been any new sewer systems in the City where people had been assessed for the system.

Mayor Dean said she couldn't remember the last time there was a new sewer except for the one that went out 5th Street and that was in 1981. This was built with federal monies.

Chairman Fields said he wanted to see the project get off the ground, but he also wanted to see the other residents in on the project. If they are agreeable for annexation that will be good; however, if they are not, then he felt the Council should take another look at it.

Mayor Dean said as she understood that both the Chairman and Mr. Black were willing to accept the report from the totally independent engineering firm located in Columbus, Ohio.

The Chairman said he had agreed to that but he understood the gentleman was going to meet with everyone involved.

Mayor Dean said the agreement was that he would meet with the Chairman and Mr. Black.

Councilman Black said he did not wish to see it done in that manner. He was under the impressions that the third party would talk with everyone on Council.

Mayor Dean thought it would be advisable if she could have a consensus of Council. The City Engineer, who is new, conducted an independent assessment of the project. His opinion was not acceptable to those complaining. She stated she would like to know that this third opinion will be accepted by all concerned.

Councilman Grubb said that whatever it takes the project needs to go forward. However, he said he didn't know how Council could say that it would accept the third report without making any changes, etc. If the circumstances were to change then the decision would have to be reserved until that point in time. If it takes an additional \$1,000,000 for the City to pay for a sewer line to residents who are not part of the City and who do not share any of the costs of building the sewer line, then it would be irresponsible for Council to approve that. The City has not even been able to come up with the money to do minimal repairs to the City streets.

Councilmember Barrett said she hoped the report would come back in support of what has already been recommended. The project must go ahead since these people have been waiting for service for more than ten years.

Councilman Patterson believed the Public Service Commission would have to approve a gravity flow system if the independent party were to say that was advisable.

Chairman Fields said it was his understanding that if this were to occur the PSC would very quickly look at the matter.

Motion by Councilman Black, seconded by Councilman Grubb, to proceed with another opinion and that it would be acceptable to City Council. No vote taken at this time.

Councilman Black suggested that it might possibly be an adverse opinion.

1ST READ ORD RE:  
BOND ISSUE FOR IMPROV:  
TO PUBLIC SEWERAGE SY:  
IN CONNECTION WITH TH:  
FINANCING OF THE INNO:  
SHOCKEY SEWER PROJECT  
CONT.

1ST READ ORD RE:  
BOND ISSUE FOR IMPROVE-  
MENTS TO PUBLIC SEWERAGE  
SYSTEM IN CONNECTION  
WITH THE FINANCING OF  
THE INWOOD-SHOCKEY  
SEWER PROJECT - CONT.

WAIVE THE RULES

1ST READ ORD RE:  
CONTRACT FOR DEMOLITION  
ON PROPERTY AT 1010  
SEVENTH AVENUE

RESOLUTION RE:  
REDEVELOPMENT OF A  
PORTION OF THE SUPER-  
BLOCK

RESOLUTION RE:  
ENCOURAGING THE DELTA  
QUEEN STEAMBOATS CO. INC.  
TO MAKE REGULAR STOPS  
IN HUNTINGTON

Mayor Dean comment that she was willing to gamble on this since she had confidence in the engineers who designed it and confidence in the City Engineer. Should there be an opinion that the present plan is not the way to go, then she would abide by that.

Motion to proceed with another opinion and that it would be acceptable to City Council carried ten (10) yeas; one (1) nay - Patterson.

THIS ORDINANCE WAS ADVERTISED.

WAIVER OF THE RULES -

Motion by Councilman Patterson, seconded by Councilman Grubb, to waive the rules in order to hear another item. Motion carried unanimously.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR DEMOLITION AND SITE CLEARANCE SERVICES TO BE PERFORMED ON THE PROPERTY LOCATED AT 1010 SEVENTH AVENUE WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF HUNTINGTON.

Mayor Dean said this contract will be for the demolition of the property located on the northeast corner of 10th Street and 7th Avenue. This will be part of the project to build a new emergency shelter in connection with the City Mission. It is recommended to award the contract to T., Incorporated of Huntington, WV in the amount of \$8,800.

Councilman Grubb said it was his understanding there are to be changes in the alignment of 10th Street and the viaduct and questioned when the approval of this would be brought to Council.

Mayor Dean said while that is part of the plan she didn't know exactly when it would occur.

THIS ORDINANCE WAS ADVERTISED.

Resolution re: A RESOLUTION OF COUNCIL WAIVING THE THIRTY (30) DAY NOTICE REQUIREMENT REGARDING THE REDEVELOPMENT OF A PORTION OF THE SUPERBLOCK IN DOWNTOWN HUNTINGTON CONSISTING OF 2.4 ACRES AT THE CORNER OF EIGHTH STREET AND THIRD AVENUE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that this Council does hereby WAIVE the thirty (30) day notice requirement regarding the redevelopment of a portion of the Superblock in Downtown Huntington consisting of 2.4 acres at the corner of Eighth Street and Third Avenue.

BE IT FURTHER RESOLVED, that the Council does hereby WAIVE any and all other notice requirements under State or Federal Law with regard to such redevelopment project.

Motion by Councilman Ellis, seconded by Councilman Grubb, to adopt this Resolution. No vote taken at this time.

Mayor Dean said this resolution is in connection with the development of the hotel at 8th Street and 3rd Avenue. She deferred to Councilman Alexander who is the chair of the Huntington Urban Renewal Authority for further comments.

Dr. Alexander explained that there is now a contract for the construction of a new hotel on the Superblock and due to the time factor it is important to move quickly.

Chairman Fields asked if there is a date certain for the groundbreaking.

Dr. Alexander replied there is not at the present time; however, it's very close.

Mayor Dean added that it is expected for the hotel to be completed within one year.

Motion to adopt this Resolution carried ten (10) yeas; one (1) abstention - Alexander.

Resolution re: A RESOLUTION OF COUNCIL AND THE MAYOR SUPPORTING AND ENCOURAGING THE DELTA QUEEN STEAMBOATS CO., INC. TO MAKE THE CITY OF HUNTINGTON A REGULAR STOP ON ITS ITINERARY IN THE FUTURE.

WHEREAS, the Delta Queen Steamboat Co., Inc. is a New Orleans based company in the business of providing riverboat cruises throughout the Eastern United States; and

WHEREAS, the Delta Queen Steamboat Co., Inc. owns several steamboats modeled after traditional Mississippi River sternwheelers; and

WHEREAS, on November 1, 1995, the City of Huntington was a port of call for the Mississippi Queen, and the passengers visited several business locations and toured the City and surrounding area; and

WHEREAS, in the summer of 1995, the American Queen visited the City of Huntington, docking at the Harris Riverfront Park, and received a tumultuous welcome; and

WHEREAS, the City of Huntington believes that the riverboat passengers and staff have found it to be a desirable stop due to its excellent riverfront park, fine staff and friendly atmosphere; and

WHEREAS, serving as a regular stop on the Delta Queen Steamboat Co., Inc. itinerary would be a mutually rewarding experience for all concerned,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AND THE MAYOR OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that the Council and the Mayor do hereby go on record as publicly SUPPORTING and ENCOURAGING the Delta Queen Steamboat Co., Inc. to make the City of Huntington a regular stop on its itinerary in the future and further, have high hopes and great expectations that the Delta Queen Steamboat Co., Inc. will ultimately decide to make the City a regular stop on future cruises.

BE IT FURTHER RESOLVED, that the City Clerk is hereby DIRECTED to send a certified copy of this Resolution to Patti Young, Vice President of Public Affairs, Delta Queen Steamboat Co., Inc., New Orleans, Louisiana, immediately upon its adoption by the Council and approval by the Mayor.

Motion by Councilmember Barrett, seconded by Councilman Ellis, to adopt this Resolution. No vote taken at this time.

Mayor Dean asked that the City Clerk read the resolution in its entirety, for the record.

Mayor Dean said she felt the City had been most fortunate to have had visits from two of the three Steamboat Queens this year and she felt it will be definite advantage to the City to have Huntington as a regular stop for the Delta Queen.

Motion to adopt this Resolution carried unanimously.

Resolution re: A RESOLUTION AUTHORIZING LOCATION CHANGE OF COMMUNITY DEVELOPMENT BLOCK GRANT PROJECT AND SECTION 108 LOAN GUARANTEE PROGRAM.

WHEREAS, the Council of the City of Huntington is authorized by the U.S. Department of Housing and Urban Development (HUD) to approve changes in the location of Community Development Block Grant (CDBG) and Section 108 Loan Guarantee Funded Projects within guidelines as established by the City of Huntington; and

WHEREAS, for Fiscal Year 1995-96, the City of Huntington allocated \$680,000 and Requested \$3 million of Section 108 Funds for acquisition of property referred to as the Polan Industrial Park, located at West Twenty-Second Street and Madison Avenue; and

WHEREAS, the City has requested that the allocation of these amounts be reallocated for the acquisition of property known as Owens-Illinois which is bounded by the Chesapeake and Ohio (CSX) Railroad on the north, West Fifth and West Seventh Streets on the east, West Ninth and Memorial Boulevard on the south, and Consumers Gas Company site on the west; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, THAT:

- (1) The amended location of said project herein described is hereby approved; and
- (2) The U.S. Department of HUD and all the departments and agencies of the City of Huntington charged with the administration and operation of the City's CDBG and 108 Programs be properly notified hereunder.

Motion by Councilman Grubb, seconded by Councilman Patterson, to adopt this Resolution. No vote taken at this time.

Mayor Dean advised that earlier in the year Council had given its approval to pursue the purchase of the Polan Industrial Park. The City was unable to reach an agreement with the owners; however, at approximately the same time the Owens-Brockway Company indicated that they were willing to consider selling their property at West 5th Street.

Councilman Patterson asked how the \$680,000 is to be used.

Mrs. Judy Rose, Department of Development, explained that \$680,000 of block grant money has been budgeted for the acquisition of an industrial site. Continuing, she stated that Governor Caperton has contributed \$1,000,000 to the City for its designation as an Enterprise Community. The money has been targeted for job-producing activities. The plan would be to use the money at the Owens site for any rehabilitation, demolition, renovation, etc.

Councilman Taylor asked the purchase price.

Mayor Dean replied that the appraised value is approximately \$4,000,000; however, the City is in the process of negotiations and will make an offer less than that.

Motion to adopt this Resolution carried unanimously.

RESOLUTION RE:  
ENCOURAGING THE DELTA  
QUEEN STEAMBOAT CO. INC.  
TO MAKE REGULAR STOPS  
IN HUNTINGTON - CONT.

RESOLUTION RE:  
LOCATION CHANGE OF  
CDBG PROJECT & SECTION  
108 LOAN GUARANTEE PROG

RECORD OF PROCEEDINGS OF THE CITY COUNCIL, Huntington, W. Va.

WTD & HARRIS INC., SPENCER, W. VA. REGISTER NO. 99079-93 REGULAR Session Held

13TH

Day of NOVEMBER

19 95

(7)

GOOD AND WELFARE

GOOD AND WELFARE -

Chairman Fields said the second meeting in December is on Christmas. He noted that the meeting will be on the following day, December 26. He asked the City Attorney what might be done, in terms of meeting, if a number of people were out of the City.

Mr. Fred Staker, City Attorney, said the Charter is specific in that there must be a meeting on the second and fourth Mondays of each month. However, should there not be a quorum Council could not proceed.

Councilman Patterson mentioned the community meetings that have taken place recently at the Ebenezer Church and the Outreach Center. He complimented the Huntington Police Department for their participation and added that he feels the meetings are very productive. He said there will be another meeting on November 16, 1995 at 6:30 p.m. at the church.

Councilman Alexander announced that there will be a memorial service on Tuesday, November 14 at the Student Center at Marshall University. This is in memory of the plane crash that happened twenty-five years ago.

Mayor Dean said she, too, was very pleased with the progress of the meetings being held in the Fairfield West Community. She said the best thing that has and will continue to come out of these meetings is communication.

Mr. Fred Staker, City Attorney, said the date for the next work session is the Friday after Thanksgiving. He wondered if there might be a change in time for that also.

The Chairman said the work session will be on Monday, November 26 at 6:00 p.m. just prior to the Council meeting.

Hearing nothing more to come before this Council, the Meeting was adjourned.

  
DALLAN FIELDS, CHAIRPERSON

  
ANN C. SHAYE, CITY CLERK

A Regular Meeting of Huntington City Council was held on the 27th day of November, 1995 at 7:30 p.m., in City Hall Council Chambers with Chairperson Dallon Fields presiding.

## INVOCATION AND PLEDGE

## INVOCATION AND PLEDGE

The Invocation was given by Councilman Patterson.

The Pledge of Allegiance to the Flag was led by Councilman Burlen W. Ellis.

## ROLL CALL

## ROLL CALL

The following Members of Council were present for this Meeting:

Dallon Fields, Chairperson  
Robert P. Alexander  
Betty Barrett  
Garry D. Black  
Burlen W. Ellis  
Nolan L. Grubb  
Greg Hawkins  
Larry D. Patterson  
James Ritter  
Bill Taylor  
William D. Toney

Also present were: Mayor Jean Dean  
Mr. Fred Staker, City Attorney  
Mrs. Ann Shaye, City Clerk

## SYNOPSIS

## SYNOPSIS

Motion by Councilman Alexander, seconded by Councilman Ellis, to approve the Synopsis, as submitted. Motion carried unanimously.

## REPORTS OF THE MAYOR

## REPORTS OF THE MAYOR

Mayor Dean said that she had no special reports.

2ND READ ORD RE:  
DAVID W. HARRIS RIVER-  
FRONT PARK EXPANSION  
PROJECT

Second Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING PARTICIPATION AND RATIFYING PRIOR PARTICIPATION OF THE CITY OF HUNTINGTON, WEST VIRGINIA, WITH THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, FOR THE IMPLEMENTATION OF THE HUNTINGTON DAVID W. HARRIS RIVERFRONT PARK EXPANSION PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF HUNTINGTON, WEST VIRGINIA, TO EXECUTE, ACCEPT, OR OTHERWISE APPROVE ALL DOCUMENTS, AGREEMENTS, INSTRUMENTS, OR OTHER NECESSARY PAPERS REQUIRED BY THE DEPARTMENT OF THE ARMY FOR PARTICIPATION IN THE IMPLEMENTATION TO THE HUNTINGTON DAVID W. HARRIS RIVERFRONT PARK PROJECT.

Motion by Councilman Toney, seconded by Councilman Alexander, to adopt this Ordinance.  
No vote taken at this time.

Mayor Dean explained that the adoption of this ordinance will authorize her to sign various documents concerning the ongoing project at the Harris Riverfront Park. The financing arrangements have already been approved.

Chairman Fields asked the completion date.

Mayor Dean replied that it would be in 1997.

Motion to adopt this Ordinance carried unanimously.

2ND READ ORD RE:  
LEASE FOR COPIER

Second Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE LEASE OF A HIGH VOLUME ELECTRONIC PLAIN COPIER FOR THIRTY-SIX (36) MONTHS, RENEWABLE ANNUALLY.

Motion by Councilmember Barrett, seconded by Councilman Patterson, to substitute Tri-State Copier's bid for rental of a copier under the state contract and return this to a first reading. No vote taken at this time.

Mayor Dean stated that it appeared, after review, that accepting the lowest bid to purchase was not what would be most beneficial for the City. Inquires were made about a state contract with regard to rental. The most beneficial rental arrangement for the City on the state contract could be provided by the Tri-State Copier Company which is located in Heritage Village in Huntington. There will be a rental agreement with the company for three years and the monthly rental will be \$600. The machine will be a Xerox, model no. 5352 CASF and it does meet the City's requirements. All of the other bids will be rejected.

Motion to amend carried unanimously.

THIS ORDINANCE WAS ADVERTISED.

✓ Second Reading of an Ordinance re: ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

2ND READ ORD RE:  
SEWER REVENUE BONDS  
TO FINANCE THE INWOOD-  
MCCOY SEWER SYSTEM.

Motion by Councilman Grubb, seconded by  
Councilman Patterson, to adopt this Ordinance.  
No vote taken at this time.

Mayor Dean advised that this is the second reading for issuance of bonds to finance the Inwood-McCoy sewer system. She deferred to Mr. Vince Collisn, bond counsel, for further explanation.

Mr. Vince Collins, attorney with the firm of Steptoe & Johnson in Clarksburg, West Virginia said that his firm had prepared the ordinance. For clarification purposes, he explained that there will be a public hearing at the third and final reading on December 11, 1995. This ordinance authorizes up to \$4,000,000 in tax exempt bonds that will be sold to or purchased by the West Virginia SRF Program. This is a state governmental agency which makes loans for sewer projects at very good interest rates. In this case it will be 3%. This ordinance does not limit the scope of the project, just the size of the bond issue. When Council is ready to issue the bonds, has delineated the project and is ready to start construction there will be a supplemental resolution presented to Council which will include specifics with respect to the exact amount of the bonds, the exact scope of the project, the date the bonds will be issued, etc.

The Chairman asked the City Attorney if any unforeseen developments should occur would there be an opportunity to table the ordinance or something of that nature.

Mr. Fred Staker, City Attorney, said there could possibly be a further or temporary injunction upon this project imposed by the Public Service Commission. There would still be ample time for Council or for another body to take another look at the project and undo what Council is doing. He said it appeared to him that all the issues, over and above the financing, will be taken up in the proceeding before the Public Service Commission to be held on January 26, 1996 in City Council Chambers.

Mr. Collins confirmed that this ordinance does not bind the Council to take any action. There must first be the Public Service Commission public hearing and a supplemental resolution.

Councilman Taylor asked if adopting this ordinance would give the City the option to use the grinder pump system.

Mr. Collins said the ordinance doesn't address the type of system, number of users, etc. This merely authorizes the financing of the project however it is defined by supplemental resolution.

Councilman Ritter said he was under the impression that if Council approved this it went to the Sanitary Board who would then "do what they wanted to with it."

Mr. Collins said that would happen only after Council has approved the project, design, etc. and a supplemental resolution has been adopted. The Sanitary Board must then spend the monies in accordance with the schedule.

Mr. Ritter said he had been told that the City cannot borrow up to \$4,000,000; it can only borrow approximately \$2,000,000.

Mr. Collins explained that this type of borrowing is a revenue bond issue and there is no constitutional nor statutory limit on how much a City can borrow. The only limitation is how much a City wishes to borrow and how much it can afford to pay back under the City's rate structure. Continuing, he said he further understood that there will be no rate increase, primarily because when the refunding was accomplished several years ago a window of lower debt service was carved out which will permit this borrowing to occur over a period of twenty years.

Mr. Ritter said he couldn't understand how the rates would not be raised since the money has to come from some place.

Mr. Collins said all of the users in the City, including the new people, will be paying rates but these have been projected to be sufficient to pay the debt service. At this point, there is a slight surplus of revenues coming into the system.

When this project is finished the surplus will be slightly less.

Councilman Ritter said he remembered the attorney for the Sanitary Board saying that the board is losing money and rates might have to be raised.

Mr. Collins said that while he didn't know what Mr. Levy, counsel for the board, had said he did know that the board operates as a business and it must do more than merely "break even." Equipment has to be maintained and periodically capital improvements must be made.

Mayor Dean said that the statement made by Mr. Levy was when consideration was being given to using the \$6,000,000 in reserve for the Sanitary Board to pay for this or any other project. An increase in rates would be necessary if that money were to be used.

2ND READ ORD RE:  
SEWER REVENUE BONDS  
TO FINANCE THE INWOOD-  
MCCOY SEWER SYSTEM -  
CONT.

Mr. Collins said that he would like to explain again, as he had previously done, that it is less expensive for the City to borrow the money because of the extremely low interest rate. To use part of the \$6,000,000, which is earning at a rate far in excess of 3%, would be more expensive.

Chairman Fields said he believed an order had been issued by Judge McCann which said that there is a limit of 2.6 million dollars for this project.

Mr. Collins said that the City cannot borrow more money than the Public Service Commission permits since it is the body that grants the certificate of convenience and necessity.

Chairman Fields asked if it would not be correct, then, that there can be the bond borrowing power of 4 million dollars but the 2.6 million dollar limit can't be exceeded according to Judge McCann's order.

Mr. Collins said it will ultimately be determined by the Public Service Commission.

Mayor Dean said the 2.6 million dollars isn't the cost of the project; the cost of the project at this point is slightly less than 2.2 million dollars. The original bids, before the removal of the properties outside the City, were beyond the 2.2 million dollar amount.

Councilman Ellis said that the amount has been raised from \$3,000,000 to \$4,000,000 and the general public has not been made aware that they are going to have to pay a bill for the next twenty years. He asked that the newspaper tell the public this before the next Council meeting. The people for whom the sewer is being installed are not having to pay and their property values are going up.

Councilman Taylor said he felt that the people should at least have to pay a tap-on fee which is \$900.

Mayor Dean advised that the residents will have to pay the tap-on fee.

Councilman Ritter asked why Council would be voting tonight and then having a public hearing on December 11, 1995.

Mr. Collins said this, tonight, would be the second of five steps. There will be an advertisement, once a week for two weeks, before December 11. After the Public Service Commission makes its determination, a supplemental resolution will be voted upon which is the final step.

Mr. Ritter said that he felt if Council voted tonight it is saying to the people "this is a done deal." The people have not had a chance to speak.

Mr. Collins said the public would have an opportunity to speak at the 3rd reading as well as at the Public Service Commission hearing on January 26, 1996.

Mayor Dean said she felt it important for Mr. Collins to assure Council that the meetings that Council has had and will have are in accordance with State law.

Mr. Collins advised that under State law, in order to issue bonds, there must be an ordinance enacted before a public hearing takes place.

Mr. Tom McCallister, 336 W. 5th Avenue, said he had heard mentioned a sliding rate, which meant to him some people are being charged one rate and others another rate. He said it is being done in the City of Huntington and that it is against the law.

Mr. Collins said that while it is frowned upon by the PSC it is not against the law. In some cases split rates are permitted.

Mr. McCallister said that under Article 10, Section 6 of the Constitution of West Virginia it is a violation of law to borrow "so much money." He asked Mr. Collins what he thought about that.

Mr. Collins said this Article basically prescribes the incurrence of debt by political subdivisions. This is not that type of debt.

Mr. McCallister said that was not correct, that Article 20, Section 6 says that the State shall not extend its credit.

Mr. Collins said that this type of borrowing which is a revenue bond issue is not a debt, in the constitutional sense, and that it is permitted and has been done for many years throughout the State.

Mr. McCallister asked Chairman Fields what his opinion was about "extending credit."

Chairman Fields said he was not going to give an opinion since Mr. Collins had been retained as the bond counsel for this matter.

Miss Hazel Parker, 1115 22nd Street, said it was her understanding to sell bonds would be less expensive than to use the money at the Sanitary Board. Listening to the discussion, she didn't know how one could calculate which method would be less expensive. There are three factors in calculating the dollars, the principal, rate, and time. Time has never been considered with reference to the \$6,000,000 nor has it been mentioned about fees, expenses, etc.

Mr. Collins said the period of borrowing is twenty years during which time the money will be repaid. The correct analysis in terms of comparing borrowing the money at 3% versus using existing funds that are being currently invested at 7% is that one would assume that if you borrowed the money for twenty years that you would also invest the money for twenty years. Regardless of the amount involved, it's still less expensive to borrow the money at 3%.

2ND READ ORD RE:  
SEWER REVENUE BONDS  
TO FINANCE THE INWOOD-  
MCCOY SEWER SYSTEM -  
CONT.

Chairman Fields asked Mr. Collins to calculate what is involved with the figure of \$4,000,000 and provide Council with that information at the next Council meeting on December 11.

Mr. Collins said he would send the information to Mayor Dean.

Councilmember Barrett said it would seem to make more sense to base his calculations on the amount that the City is borrowing rather than the \$4,000,000.

Mr. Collins said he would calculate the figures based on both of the amounts.

✓ Motion to adopt this Ordinance carried seven (7) yeas;  
four (4) nays - Ellis, Ritter, Taylor, Toney.

Second Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR DEMOLITION AND SITE CLEARANCE SERVICES TO BE PERFORMED ON THE PROPERTY LOCATED AT 1010 SEVENTH AVENUE WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF HUNTINGTON.

2ND READ ORD RE:  
CONTRACT FOR DEMOLITIC  
AT 1010 SEVENTH AVENUE

Motion by Councilman Patterson, seconded by  
Councilman Grubb, to adopt this Ordinance.  
No vote taken at this time.

Mayor Dean explained that the low bidder for the demolition of the property is T. Inc. in the amount of \$8,800. It is part of the Seventh Avenue redevelopment project.

Councilman Toney asked who has the title to the property.

In response Mayor Dean answered that the City does.

Mr. Toney said that the doors have been open during the day and at night, suggesting that this could be a problem for the City.

Mayor Dean said that she was unaware of that but would see that the building is secured.

Councilman Alexander asked if the property will be conveyed to the Huntington Urban Renewal Authority at a later date.

Mayor Dean responded that it will be.

Based on that, Dr. Alexander said he would abstain from voting since he is the Chairman of the Authority.

Motion to adopt this Ordinance carried ten (10)  
yeas; one (1) abstention - Alexander.

First Reading of an Ordinance re: AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE CODIFIED ORDINANCES. (Postponed)

1ST READ ORD RE:  
APPROVE CURRENT REPLACI  
PAGES TO THE CODIFIED  
ORDINANCES

Mayor Dean said it was her understanding that this will update the codified ordinances by bringing into existence the replacement pages for the changes that have taken place in the State law that affect the City's ordinances.

Councilman Grubb explained that it had been postponed because it had been presented in a format previously not used. In reviewing this, the amendment involved changes in wording such as "school building" to "school facility." The Walter Drane Company has kept up with the additions and changes enacted by State Code. Since the City has adopted an ordinance that states that it automatically adopts those provisions, as changed by the Legislature, this is in accordance with that.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY COMMISSION OF CABELL COUNTY, WEST VIRGINIA REGARDING THE CONFINEMENT OF CITY PRISONERS IN THE CABELL COUNTY JAIL.

1ST READ ORD RE:  
INTERGOVERNMENTAL AGRE  
REGARDING CONFINEMENT  
OF CITY PRISONERS

Mayor Dean stated that Council has already approved this agreement by resolution; however, the City Attorney has been notified that the Attorney General of the State of West Virginia is requiring an ordinance to be enacted to approve this agreement.

Mr. Fred Staker, City Attorney, apologized to the Mayor and Council for any confusion that this might have caused. The former Attorney General required a resolution. However, the present Attorney General has requested an ordinance.

Chairman Fields asked the per diem, per day.

Mayor Dean replied that it is \$36.50.

THIS ORDINANCE WAS ADVERTISED.

1ST READ ORD RE:  
PROVIDE LOCAL FUNDING  
FOR CONTINUED TTA BUS  
SERVICE

First Reading of an Ordinance re: AN ORDINANCE DIRECTING THAT THE ISSUE OF THE AUTHORIZATION OF ADDITIONAL LEVIES, FOR THE PURPOSE OF PROVIDING SUFFICIENT LOCAL FUNDING TO THE TRI-STATE TRANSIT AUTHORITY TO CONTINUE BUS SERVICE TO THE CITY OF HUNTINGTON, BE SUBMITTED TO THE VOTERS OF THE CITY OF HUNTINGTON, IN THE PRIMARY ELECTION TO BE HELD IN CABELL AND WAYNE COUNTIES, WEST VIRGINIA, ON TUESDAY MAY 14, 1996 AND DIRECTING THE OFFICERS OF THE CITY COUNCIL TO EXECUTE AND FILE THIS ORDINANCE WITH THE RECORDS OF THE CITY COUNCIL AS THE ORDER SUBMITTING THE ISSUE TO THE VOTERS OF THE CITY OF HUNTINGTON AT THE PRIMARY ELECTION TO BE HELD MAY 14, 1996.

Mayor Dean explained that the director, Mrs. Vickie Shaffer, of the Tri-State Transit Authority was in attendance. She then asked Mrs. Shaffer to outline the scheduling for the renewal of the levy.

Mrs. Vickie Shaffer, 16 Oakwood Road, asked that Council adopt the ordinance at the next reading in order to place the excess levies on the ballot for the May 14, 1996 primary election. While it says "additional levies" Mrs. Shaffer explained that the language must read in this manner but it is merely a renewal and continuation of the same levies that have been in existence since 1982. Because of the political climate in Washington she explained that it is expected that there will be a great loss in federal funding.

Councilman Hawkins asked how much the City and County contribute toward keeping the T.T.A. in operation.

Mrs. Shaffer said the City and the County contribute nothing; it's all paid for by property owners in excess property taxes. The amount of the City revenues to T.T.A. in 1995 was \$1,087,000. The County's revenues totaled \$666,000.

Councilman Ritter said a number of citizens had asked why the excess levy is needed when T.T.A. has spent so much money in renovation of its new facility on 4th Avenue and 13th Street.

Mrs. Shaffer said the federal government is still a strong believer in capital grants, i.e., for construction of buildings, purchase of equipment. Through the auspices of Congressman Nick Rahall and Senator Robert Byrd the Transit Authority was able to obtain a \$3,500,000 grant from the federal government. Most of the grant will be used for the purchase of busses; there was also money in the grant to replace the concrete. That money cannot be used to pay bus drivers. The excess levy is the main source of the operating expenses.

Councilman Ritter said he knew that there are cities that use smaller busses, ones that seat 18-20 people. He asked why the Authority didn't consider using a smaller bus.

Mrs. Shaffer said she didn't know to which bus he was referring; however, she did explain why the Authority purchases the busses it does. The direct hourly cost to operate a bus is approximately \$34.50 Of that \$4.06 has to do with the size of the bus. The remainder is used for the wages for drivers and mechanics. The busses last 12-15 years. The size of the bus is reduced when there are wheel-chair customers, in terms of seating capacity. East bus has two wheel-chair lifts and the use of these has gone up 370% in the past year. The busses, in use, are small in the industry.

Mr. Ritter said he has often seen busses with only 10 passengers. A church bus could be purchased for \$25,000.

Mrs. Shaffer said a bus of that type would not withstand "stop and go" bus service traffic. It would not last as many years and would have to be replaced much sooner. She noted that the T.T.A. busses are also much safer, citing two serious accidents. No one was hurt in either accident.

Councilman Alexander said that over the years, he has always brought up three issues important to him. One is that he has taken a hard look at waiving the rules, the second is that any time an alley is abandoned, etc. he has insisted on a reversionary clause and the third has been that he feels the City residents are double-taxed (in the matter of the T.T.A. excess levy) since the issue is placed on the City ballot as well as the County ballot. He cited, as an example, a legal case in Baltimore, Maryland where it was ruled that citizens were being doubly taxed and that it was illegal.

Mrs. Shaffer said she wasn't familiar with the case in Baltimore, Maryland and that possibly the excess taxation was not through excess levy nor through ballot. The City residents, in Huntington, have the option of voting for one or both levies. There is representation.

Dr. Alexander said the service, in the County, has increased whereas the service in the City has remained about the same but the percentages of revenues continue to be the same.

Mayor Dean questioned if it would be possible to ascertain if sufficient bonding capacity exists within the County in order that it might simply be a County excess levy. Everyone would then be voting as County residents and not as City and County residents. While this may be the only way, she felt that question should be answered.

Mrs. Shaffer said she knew the excess levying capacity does not exist within the County since the thirteen levies that the County now carries takes almost the entire excess levying capacity. To increase it for T.T.A. would mean taking it away from someone else.

Dr. Alexander said the City is happy to do its share; however, there should not be a sense of separation but a sense of pulling together and each contributing its fair share.

The City Attorney shared his views, explaining that there isn't anything unconstitutional in the system of taxation since it is approved by referendum to the voters. If there is double taxation it is nevertheless done by referendum so it is constitutionally legal.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, 1960, AND THE ZONE MAP ATTACHED THERETO AS A PART THEREOF, BY ZONING TO B-1 LOCAL BUSINESS PROPERTY LOCATED ON THE SOUTH SIDE OF THE 1800 BLOCK OF SEVENTH AVENUE, PARCELS 607-612, LOTS 4-15, BLOCK 320, MAP 19.

1ST READ ORD RE:  
ZONING TO B-1 LOCAL  
BUSINESS PROPERTY LOCATED  
ON SOUTH SIDE OF THE 1800  
BLOCK OF 7TH AVENUE

Mayor Dean advised that this was unanimously approved by the Planning Commission at its November meeting. She then deferred to the Planning Director for further information.

Mr. Richard Dixon explained that the property is presently zoned light industrial which will not permit residential development. The owner of the property wishes to develop quality housing for Marshall University students.

Councilman Ellis said he felt this would be a big improvement for the neighborhood.

THIS ORDINANCE WAS ADVERTISED.

Resolution re: A RESOLUTION OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO A GRANT CONTRACT AGREEMENT WITH THE STATE OF WEST VIRGINIA SECRETARY OF FINANCE AND ADMINISTRATION FOR AN ON BEHALF OF THE STATE OF WEST VIRGINIA CRIMINAL JUSTICE AND HIGHWAY SAFETY DIVISION, TO RECEIVE FUNDS TO ENABLE THE CITY OF HUNTINGTON TO CONTINUE ITS COMPREHENSIVE COMMUNITY TRAFFIC SAFETY PROGRAM IN CABELL COUNTY, WEST VIRGINIA.

RESOLUTION RE:  
AGREEMENT WITH STATE  
TO RECEIVE FUNDS TO  
CONTINUE ITS COMMUNITY  
TRAFFIC SAFETY PROGRAM  
IN CABELL COUNTY

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that the Mayor is hereby AUTHORIZED to enter into a Grant Contract Agreement with the State of West Virginia Secretary of Finance and Administration for and on behalf of the State of West Virginia Criminal Justice and Highway Safety Division, to receive funds of up to \$60,000.00 to enable the City of Huntington to continue its comprehensive community traffic safety program in Cabell County, West Virginia. A true copy of the Grant Contract Agreement is attached hereto and made a part of this Resolution of Council.

Motion by Councilman Alexander, seconded by Councilman Ellis, to adapt this Resolution.  
No vote taken at this time.

Mayor Dean stated that this is a continuation of a grant program that is currently in operation. She explained that the Traffic Safety Officer was present and would be happy to explain more about the program.

Mr. Larry Kendall, Traffic Safety Officer, advised that the adoption of the resolution will permit the continuation of educational programs through the Police Department to make the public more aware of incidental situations that often cause serious problems, such as drivers failing to stop at stop signs, running red lights, cutting across corners, not wearing seat belts, etc. He called attention to a press conference for Drunk Driving Awareness Month this Friday, December 1, 1995 on the steps of City Hall at 10:00 a.m. He hoped all would plan to attend.

Motion to adopt this Resolution carried unanimously.

GOOD AND WELFARE -

GOOD AND WELFARE

Councilman Alexander, noting that Marshall University has advanced to the football playoffs, urged everyone to attend and support the team at its game on Saturday, December 2.

Councilman Grubb recognized Mr. Marvin Fuller's efforts in keeping a "watch" over Harveytown. He called attention to Mr. Fuller having mentioned finding City parking meters in the former skateboard park. This is the third time meters have been found there. They have been broken open and the money removed. He wondered if the owner(s) could be asked to fill in the area with concrete or demolish it in order to stop this practice.

Mayor Dean said she had two memoranda from Mrs. Yvonne Ball, the coordinating director of the Municipal Parking Authority dated in September. This was when Mr. Fuller noticed the first two meters that were found. These meters were destroyed but the vault doors were not removed and therefore are reusable. Mrs. Ball believes that because it is so difficult to get into the money on a meter and because there is so little to be found that this type of practice will not continue. Additionally, she received another memorandum from Ms. Ball about another meter found in that location. It turned out that the meter belonged to Marshall University.

Mr. Marvin Fuller, speaking from the audience, said the parking board had picked up the previous meters but not all of them. He also mentioned that the area continues to be a haven for less-than-desirable practices and that he has seen what appears to be satanic drawings on the concrete.

Dr. Alexander asked if the meters had been dusted for fingerprints.

Chief D. Lee Black, Police Department, said this would be a good idea but unless the suspect's prints were on file it would be to no avail.

Dr. Alexander said this would at least show if it is the same individual. He hoped this would be done.

Chairman Fields asked the Chief if this could be done.

Chief Black responded that he would see what could be done and would increase the patrol in that area.

RECORD OF PROCEEDINGS OF THE CITY COUNCIL, Huntington, W. Va.

CAPTO & HARRIS INC., SPENCER, W. VA. REG-ORDER NO. 99079-92 REGULAR Session Held

27TH

Day of NOVEMBER

19 95

(7)

GOOD AND WELFARE -  
CONT.

Councilmember Barrett commented that she felt, from what she knew, that this is a very unsafe situation. The property owner should be asked to do something.

Mr. Tom McCallister, 336 W. 5th Avenue, said it appeared to him that a new sewer line is going to Bennett's Point which is next to a line going to the new high school. He asked the Chairman what he knew about it.

Chairman Fields said he had a copy of the Mayor's response to a memorandum asking about this matter. He asked Mayor Dean to address the issue.

Mayor Dean said it was quite simple. When the 4" line was being put in the Board of Education offered to install an additional 6" line at no cost if the City would provide the pipe. This will give the City the ability, at a later date, to proceed beyond the school site for industrial or economic development of any kind.

Mr. McCallister said that while it is a good idea there must be a line item for particular monies. This should have come to Council. He asked if it did. He said the Mayor cannot exceed a certain dollar figure without a levy adjustment.

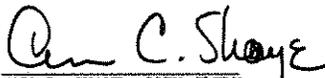
Mayor Dean said she had not exceeded any budget appropriation. Any budget revision that takes place within the General Fund is brought to Council for approval. The cost of the pipe was taken from the line item in the Sanitary Board's budget that would purchase pipe for any project. The Sanitary Board approved this and it was not necessary to come before City Council. The budget line for pipe has not been overspent and a budget revision was not necessary.

Mr. McCallister asked for a dollar amount that the taxpayers will have to spend to pay for this additional sewer line.

Mayor Dean said it has saved the taxpayers over \$129,000. She said she would supply Council with a copy of pertinent information.

Hearing no other business to come before this Council, the Meeting was adjourned.

  
DALLAN FIELDS, CHAIRPERSON

  
ANN C. SHAVE, CITY CLERK

A Regular Meeting of Huntington City Council was held on the 11th day of December, 1995 at 7:30 p.m., in City Hall Council Chambers with Chairperson Dallan Fields presiding.

INVOCATION AND PLEDGE

INVOCATION AND PLEDGE

The Invocation was given by Councilman William Toney.  
The Pledge of Allegiance to the Flag was led by Councilman Burlen W. Ellis.

ROLL CALL

ROLL CALL

The following Members of Council were present for this Meeting:

- Dallan Fields, Chairperson
- Robert P. Alexander
- Betty Barrett
- Garry D. Black
- Burlen W. Ellis
- Nolan L. Grubb
- Greg Hawkins
- Larry D. Patterson
- James Ritter
- Bill Taylor
- William D. Toney

Also present were: Mayor Jean Dean  
Mr. Fred Staker, City Attorney  
Mrs. Ann Shaye, City Clerk

SYNOPSIS

SYNOPSIS

Motion by Councilman Alexander, seconded by Councilman Patterson, to approve the Synopsis, as submitted.  
Motion carried unanimously.

REPORTS OF THE MAYOR

REPORTS OF THE MAYOR

Mayor Dean said that she wished to make an "Employee of the Month" award to Lisa Bailey, the administrative assistant in the Legal Department. She was nominated by the City Attorney, Fred Staker who said that she has done an excellent job in the collection of delinquent accounts. She collects approximately \$45,000 per month and is an asset to his office. Asking Miss Bailey to step forward, she presented to her a certificate of appreciation, a check for \$50 and an invoice that entitles her to two tickets to a performance at the Huntington Civic Arena.

Miss Bailey thanked everyone and said she would continue to work diligently in her job.

Mayor Dean then called attention to the upcoming Marshall University Championship NCAA 1-AA game on Saturday, December 16. She felt everyone should be enormously proud of the team's achievement and invited Council to join with her in congratulating the coach and the team as well as members of the Athletic Department. She added that all employees have been asked to wear green and white on Friday in recognition of the team.

2ND READ. ORD. RE:  
LEASE FOR COPIER

Second Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR THE LEASE OF A HIGH VOLUME ELECTRONIC PLAIN COPIER FOR THIRTY-SIX (36) MONTHS, RENEWABLE ANNUALLY.

Motion by Councilman Ritter, seconded by Councilman Alexander, to adopt this Ordinance.  
No vote taken at this time.

Mayor Dean stated that the City will be leasing the copier from Tri-State Copier Company which is located in Heritage Village in Huntington. The City will be piggybacking onto the state contract and the monthly lease amount will be \$600. The contract is for a term of three years.

Motion to adopt this Ordinance carried unanimously.

2ND READ. ORD. RE:  
TO APPROVE CURRENT  
REPLACEMENT PAGES TO THE  
CODIFIED ORDINANCES

Second Reading of an Ordinance re: AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE CODIFIED ORDINANCES.

Motion by Councilman Grubb, seconded by Councilman Ellis, to adopt this Ordinance.  
No vote taken at this time.

Mayor Dean deferred to Councilman Grubb who chaired the committee that worked on the codification.

Councilman Grubb explained that the committee met and reviewed the items that were on the list forwarded to Council by the Walter Draine Company. There were minor adjustments and revisions of the ordinances; the committee was unanimous in its decision to adopt the ordinance approving the codification.

2ND READ ORD RE:  
TO APPROVE CURRENT  
REPLACEMENT PAGES TO THE  
CODIFIED ORDINANCES

The Chairman asked the City Attorney if he agreed.

Mr. Fred Staker, City Attorney, said that he had reviewed the specific provisions and had concluded that all of the provisions were changes in the previous state law. Those provisions were incorporated and adopted into the City's ordinances when it adopted specific state statutes. It would be proper to adopt the ordinance.

Motion to adopt this Ordinance carried unanimously.

Second Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY COMMISSION OF CABELL COUNTY, WEST VIRGINIA REGARDING THE CONFINEMENT OF CITY PRISONERS IN THE CABELL COUNTY JAIL.

2ND READ ORD RE:  
AGREEMENT WITH COUNTY  
COMM REGARDING CONFINEMENT  
OF CITY PRISONERS  
IN COUNTY JAIL

Motion by Councilman Ritter, seconded by Councilman Patterson, to adopt this Ordinance. No vote taken at this time.

Mayor Dean explained that for many years the City of Huntington has had an agreement with the Cabell County Commission for the lodging of City prisoners in the Cabell County jail. The agreement which was initially put in place has not been updated for several years and this agreement will simply memorialize what is taking place now. The rate for confinement is \$36.50 per day per prisoner.

Chairman Fields asked the City Attorney if this fee included any medical costs.

Mr. Staker replied that it did not.

Motion to adopt this Ordinance carried unanimously.

Second Reading of an Ordinance re: AN ORDINANCE DIRECTING THAT THE ISSUE OF THE AUTHORIZATION OF ADDITIONAL LEVIES, FOR THE PURPOSE OF PROVIDING SUFFICIENT LOCAL FUNDING TO THE TRI-STATE TRANSIT AUTHORITY TO CONTINUE BUS SERVICE TO THE CITY OF HUNTINGTON, IN THE PRIMARY ELECTION TO BE HELD IN CABELL AND WAYNE COUNTIES, WEST VIRGINIA, ON TUESDAY MAY 14, 1996 AND DIRECTING THE OFFICERS OF THE CITY COUNCIL TO EXECUTE AND FILE THIS ORDINANCE WITH THE RECORDS OF THE CITY COUNCIL AS THE ORDER SUBMITTING THE ISSUE TO THE VOTERS OF THE CITY OF HUNTINGTON AT THE PRIMARY ELECTION TO BE HELD MAY 14, 1996.

2ND READ ORD RE:  
PROVIDE LOCAL FUNDING  
TO TTA TO BE PLACED ON  
BALLOT (5-14-96)

Motion by Councilperson Barrett, seconded by Councilman Black, to adopt this Ordinance. No vote taken at this time.

Mayor Dean stated that the adoption of this ordinance will allow the continuation of the Tri-State Transit Authority levy to be placed upon next year's primary election ballot. She noted that Mrs. Shaffer, director of the Authority and Mr. Williams, president of the board were both present if there were any questions.

Councilman Taylor said he and a number of his constituents had not realized that simply because one owns property in the City that their vote meant that the person would be paying for two levies. He said he could support it if it were only a county levy.

Mrs. Vickie Shaffer, 16 Oakwood Road, director of the Authority, said that while it would appear to be more fair if there were only one levy it would still be the same amount of money. The amount of money necessary to support the Transit Authority must either come from a county-wide levy that would be increased or a City levy that would be increased. This is now shared between the City and the county as it has been since 1982. It takes both levies to support the service provided by the Authority. All busses provide service to the City en route to routes that extend beyond the borders of the City. The Ceredo-Kenova route is an excellent example. The majority of the business on that line is from Camden Park to downtown. The City voter has the benefit of the system whether it serves the City or beyond its limits. Unfortunately, Mrs. Shaffer stated, there simply isn't enough excess levying capacity remaining with the County Commission.

Councilman Alexander said that, in essence, the City has the major portion of the expenses involved. He asked Mrs. Shaffer if the busses do go to Ceredo-Kenova.

Mrs. Shaffer answered that there is a Ceredo and Kenova bus line and there has been one since T.T.A. was originally organized.

Dr. Alexander asked if that is outside the jurisdiction of Cabell County.

Mrs. Shaffer said that it is outside the jurisdiction of the City of Huntington, Cabell and Wayne counties.

Dr. Alexander asked if there were a levy in Wayne County in support of T.T.A. that serves the residents of Ceredo and Kenova.

Mrs. Shaffer said there has been no income from Wayne County. She added that this route is of benefit to the City since people ride into downtown where they spend their money.

RECORD OF PROCEEDINGS OF THE CITY COUNCIL, Huntington, W. Va.

CANTO & HARRIS INC., SPENCER, W. VA. RECORDER NO. 99079-93

REGULAR Session Held

11TH

Day of DECEMBER

19 95

(3)

2ND READ ORD RE:  
PROVIDE LOCAL FUNDING  
TO TTA TO BE PLACED ON  
BALLOT (5-14-96) -CONT.

Dr. Alexander said that the residents of the City who live in Westmoreland do pay the levy and they are in the county of Wayne. The other citizens in Wayne County do not pay the levy.

Mrs. Shaffer said that was correct. She said, however, that those who do not pay the levy do pay federal taxes. T.T.A. is supported in part by federal revenue.

Dr. Alexander asked if the City of Huntington's levying power is not reduced since the City residents are contributing twice, through the City and the county. This would mean, he said, that in the future the City might be restricted in its levying authority just as the county has been restricted presently.

Mrs. Shaffer said that that would be true.

Councilman Grubb offered another view since he felt it is somewhat misleading to say that the residents of the City bear the bulk of the burden of supporting the levies. The businesses of the City are levied at four times the rate the residents are levied. They bear the bulk of the levy. The reason that the business community has uniformly supported the levies is that the T.T.A. provides a vital service to the business community. While the ridership is not what it was at one time the fact that the City has public transportation is of extreme importance to the City of Huntington.

Councilmember Barrett said there has been considerable notice given with respect to there being two levies. There are two places on the ballot. Knowing that the service is of such value, the citizens have supported this for many years. It's important for businesses that are recruited by the City's economic development organizations to know that Huntington offers this service. There are many disabled people, many young people and many elderly people who need this service. She concluded by stating that she hoped the citizens would continue to support this even though they do know they are voting twice.

Chairman Fields asked for confirmation that there is nothing new about this levy, that it's merely a continuation of the levy.

Mrs. Shaffer confirmed that there is nothing new about this levy. The levy was originally approved by the voters in 1982 at the current levy rate and this is a request for a continuation of the existing levy at the same rate.

Councilman Hawkins said that since federal funding has been reduced he felt it should definitely be supported and he hoped the ordinance would be adopted.

Councilman Ritter asked that Mrs. Shaffer explain about the renovation of the present T.T.A. facility and federal funding.

Mrs. Shaffer replied that it is a lot easier to get federal monies for capital investment i.e., monies for equipment, buildings, etc. than to get it for operating expenses. Eighty percent of the money for the concrete work for the new facility was from federal funding. These dollars cannot be used to operate busses.

Mr. Marvin Fuller, 1438 Harvey Road, said he couldn't understand why Councilman Alexander would not support the levy, especially since it helps local businesses. He urged Council members to vote for this since the citizens of Huntington need the service.

Councilman Alexander said he believed he had made it clear that he was supporting the legislation; however, since the Council meetings are public forums he felt it important to inform the public about the fact that this involves two levies, one for the City and one for the county. He added that he also had some reservations about offering the service outside the City of Huntington.

Motion to adopt this Ordinance carried ten (10) yeas;  
one (1) nay - Taylor.

The Chairman noted that he had not asked the director (Mr. Jim Williams) of the board if he had any comments.

Mr. Jim Williams, 227 Forest Road, said he deeply appreciated Council's support of the ordinance.

2ND READ ORD RE:  
ZONING TO LOCAL BUSINESS  
PROPERTY ON THE SOUTH  
SIDE OF THE 1800 BLOCK  
OF SEVENTH AVENUE.

Second Reading of an Ordinance re: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, 1960, AND THE ZONE MAP ATTACHED THERETO AS A PART THEREOF, BY ZONING TO B-1 LOCAL BUSINESS PROPERTY LOCATED ON THE SOUTH SIDE OF THE 1800 BLOCK OF SEVENTH AVENUE, PARCELS 607-612, LOTS 4-15, BLOCK 320, MAP 19.

Motion by Councilman Ellis, seconded by  
Councilmember Barrett, to adopt this  
Ordinance. No vote taken at this time.

Mayor Dean said this petition to rezone had been approved by the Planning Commission. The purpose is to allow Mr. Fred Nezhad to develop an apartment complex that will service Marshall students, primarily.

Motion to adopt this Ordinance carried unanimously.

✓ Third Reading of an Ordinance re: AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF HUNTINGTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1995 (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

3RD READ ORD RE:  
LOAN AGREEMENT RELATING  
SEWER REVENUE BONDS -  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM

Motion by Councilman Grubb, seconded by  
Councilman Patterson, to adopt this Ordinance.  
No vote taken at this time.

Mayor Dean stated that this is the third reading and public hearing for issuance of bonds to finance the Irwood-McCoy sewer system. She explained that Mr. Vince Collins, bond counsel, Mr. Robert Levy counsel for the Huntington Sanitary Board, Mr. Bruce Churton, board member, Mr. Greg Menniti with Chester Environmental and Mr. Phil Hearn the general manager of the Wastewater Treatment Plant were all present for any questions. She added that there were a number of residents in the area who might wish to speak.

Councilman Ellis said that he did not believe a question asked by Miss Hazel Parker, at the last meeting, had been answered. This had to do with the fee Mr. Collins would be charging.

Mr. Vince Collins, attorney with the firm of Steptoe & Johnson in Clarksburg, West Virginia said that he does not sell the bonds. He merely prepares the documents. The bonds will be sold to the West Virginia SRF Program at par. If the question is "what are all of the fees involved in the sale of the bonds" then there will be legal fees, his fee, publication costs, miscellaneous costs, etc.

Councilman Ellis asked if those fees would be less than \$100,000 or \$50,000.

In response Mr. Collins said the total fees would be less than either of the mentioned fees and expected them to be less than \$35,000.

Chairman Fields asked that it be clarified that this reading would not be the final step since there must be a final supplemental resolution.

Mr. Collins confirmed that was true. After the adoption of this ordinance there will be actions taken by the Public Service Commission. If they do not issue a certificate for the project, it cannot be built. There will also be a final definitive resolution that will provide for all of the details, assuming the PSC approves the project.

The Chairman asked the Sanitary Board's attorney, Mr. Robert Levy, if he concurred.

Mr. Robert M. Levy said he agreed. To further explain, he stated that the Public Service Commission approved a certificate of convenience and necessity for the City with a limit of \$2,200,000. Unfortunately, the bids came in a little over that, approximately \$100,000. This meant the board had to go back to the PSC to get them to approve the sum over the \$2,200,000. In addition there were two other changes. Additional grinder pumps were added to the number that were already there. Originally, it was thought that this project might include cooperation with the county and to approve those county residents outside the City. With the third set of revised plans submitted to the PSC the people outside the City were eliminated from the plan. This brought the sum down below the \$2,200,000. The Department of Environmental Protection has verbally approved the plan and they will send a written approval. When this is received it will be sent to the Public Service Commission. With the change orders it will be under the \$2,200,000. The board will then ask the PSC to approve the revised plan. Two complaints have, however, been filed. One is by some residents outside the City who have now been eliminated from the plan and one by a City resident who objects to the use of grinder pumps. A hearing has been set, by the Public Service Commission, before an Administrative Law Judge at 10:00 a.m. on Friday, January 26, 1996 in Council Chambers.

Chairman Fields commented that Mr. Levy had mentioned different plans. He asked which one, specifically, has been approved by the PSC.

Mr. Levy said the first set of plans was approved by the PSC which was for \$3,200,000 and did include some residents outside the City. The second set of plans has been approved by the Department of Environmental Protection and their approval has been sent to the Public Service Commission. The third set of plans which reduced the amount below the \$2,200,000, and which have been approved by change orders has been submitted to the Department of Environmental Protection Department. Last week the board was told, verbally, they had approved the plans and are writing up the approval and will send it to the PSC.

The Chair asked that it be confirmed that the adoption of this ordinance is acting upon the first approval by the Public Service Commission, not the Department of Environmental Protection.

Mr. Collins said this ordinance approves a project that consists of a general description of the facility to be financed. The description would fit any of the plans. As long as the sum of money is under \$4,000,000 any of the plans can be used.

Councilman Ellis said that it was his understanding that once the bonds were approved, the money would go to the Sanitary Board and it would then ask for bids, which has already been done. Then after the money is issued, a contract can be awarded to the company to begin work.

3RD READ ORD RE:  
LOAN AGREEMENT RELATING  
TO SEWER REVENUE BONDS -  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM - CONT.

Mr. Levy added that it must be after the PSC approves this and issues a certificate of convenience and necessity.

Mr. Ellis said that after the bids are approved City Council has no more input. It would then be in the hands of the Sanitary Board.

Mayor Dean said that since Mr. Levy had not heard the discussion in the work session she would like for Mr. Collins to state the fact that there is yet another resolution to be adopted by City Council.

Chairman Fields stated that if Council wished to stop the project at the reading of the resolution it could do that.

Mr. Collins advised that this was the fact. He cautioned Council that if it should elect to do this, there were certain matters that should be considered. When bids have been submitted, which they have, then at later dates if there are other projects there may be much less bidder interest and not such good bids. Contractors spend a lot of time in submitting their bids.

Mr. Levy interjected briefly to explain that should Council wish to stop the project before the final resolution it could do so.

Councilman Hawkins asked for confirmation that the total amount for the project would be \$2,200,000.

Mr. Collins said that would be correct, or whatever figure the PSC would approve, but not more than \$4,000,000.

Councilman Taylor asked if the final plans have been drawn for the area and what the cost to each resident will be.

Mr. Levy answered "within inches." He said the tap fee, as set by City Council, is \$900.

Mr. Taylor expressed his disagreement with the grinder pumps and then asked who would pay for the electricity used.

Mr. Levy responded that the Sanitary Board will pay for the electricity. An arbitrary figure, of "so much" per month has been set. It will be billed to the householder. The board will ask the electric company to estimate and from time-to-time revise that figure, as to how much the cost of electricity is for a grinder pump for the average household. The people will then receive a credit on their sewer service charge fee.

Mr. Taylor said he had experience with the grinder pumps and the electricity bill had gone up. They were not efficient.

Mayor Dean pointed out that there are at least two other townships who have been contacted that use the grinder pumps. One is in Peters Township, Pennsylvania which has 907 grinder pumps and has used them since 1991. The other is a far bigger system in Hot Springs, Arkansas. It has 2500 of them and has used them since 1984. Apparently they are working in other cities, why not here... she asked.

Chairman Fields said he knew that if one submitted a request for a loan through the Veterans Administration that they would not approve it if the person has a grinder pump located on the property.

Mayor Dean said that she, of course, had not seen documentation of that but felt the track record of the other cities should be relied upon with respect to the efficiency of the grinder pumps.

Chairman Fields said that as it stands currently, under the approval of the project as it is now, there is no fee attached to the project. He said he was talking about the original plans submitted, not the third set that is awaiting approval.

Mr. Levy said that was correct and that the third set won't be approved until the January 26, 1996 hearing.

Mr. Fields said then that the first set of plans approved did not include any fees.

Mr. Levy explained it didn't have to include tap fees. That is something the City has the authority to do. The PSC has no control. He said there was a Deregulation Act passed about four or five years ago by the West Virginia Legislature which took some jurisdiction away from the Public Service Commission in West Virginia and gave that jurisdiction back to the cities. The cities have a right to set rates and tap fees and unless 25% of the people affected object within a certain number of days, to the PSC, those rates go into effect without PSC approval.

Councilman Ritter asked how much it costs to actually dig down, etc. for a tap onto a sewer.

Mr. Levy said the cost is slightly over \$1,000. He believed it to be approximately \$1,040.

Councilman Hawkins asked if it were not true that the property owners would have to pay for the cost to bring the line from the septic tank to the road.

Mr. Levy said it would be more accurate to say they would bring the line from their house to the road.

Mr. Fields said that additionally there will be the cost to the property owner to collapse the existing septic tank and fill it in since both cannot be in place.

Mr. Levy said that anytime a sewer is installed, the people have to bring their line to the road.

Councilman Ellis asked Mr. Collins if he would be prepared, when the supplemental resolution is brought before Council, to tell the citizens of Huntington how much they will have to pay.

Mr. Collins said he would be able to tell Council what the debt service will be, adding that the payback period will be for twenty years. It was his understanding that there will not be a rate increase as a result of this project.

Councilman Ritter said someone, obviously, has to pay for the project.

Mr. Collins said all of the users will pay a uniform rate and all of the users in the City will be paying off the bonds, over a period of time. He then deferred to Mr. Levy.

Mr. Levy stated that the Sanitary Board cannot and will not raise the rates. Any rate increases have to be set by City Council. When the Sanitary Board came to Council a few years ago to approve a refinancing of the bonds, this saved a tremendous amount of money. The savings could have been taken in one of three ways, cash, pay off the thirty years in twenty-four years or more money could be borrowed. The latter is what was done and this is called creating a window. It is this window that will basically provide this money, without additional fees. He noted that there has been no increase in fees for approximately twelve years. Irrespective of this project, the financial situation of the board will have to be considered at some point. As to "who" will pay for this project, all the 23,600 people who are on the sewer system will eventually pay for it.

Councilman Taylor asked if the people, with the yet undeveloped land in that area, would be required to pay.

Mr. Levy said they would be required to pay the tap fee.

Chairman Fields asked if that would be per unit.

Mr. Levy said it would be per unit unless the developer pays for all of the sewers and keeps it private and comes to one meter. Then he pays only the one tap fee. The people inside the development are responsible for maintenance. If the Sanitary Board takes over the system and maintains it then each individual will have to pay a tap fee.

Councilman Ritter said the City provides streets, curbs, sidewalks and sewers. A situation developed on Magazine Avenue whereby the citizens had to pay for a street themselves. In this instance, the residents are being given this service at no cost. There are citizens on Auburn Road, in his district, that have raw sewage coming into their homes. To increase fees to pay for another project when they have raw sewage in their homes is not right, he said.

Mayor Dean pointed out that when an area is developed, the initial road must be put down by the developer, not by the City. There won't be an increase to anyone, as a result of this project.

Councilmember Barrett asked if the board did not still have the \$6,000,000 reserve that is providing the interest.

Mr. Levy said the City will be paying the same amount on bonds, per year, next year as it did two years ago.

Mr. Collins said it would actually be a little less.

Councilman Alexander asked the source of the reserve that the board now has. Has it been the result of good financial management or is it because the rates were excessively high and the money accumulated.

Mr. Levy advised that the board has been operating at a loss for a number of years; the reserve came from a prior refinancing. The one referred to earlier, a few years ago, was not the first one. The first one was even more profitable to the board. More cash was received and that, coupled with the fact that construction contracts came in far below the estimate, permitted the accumulation of funds.

Dr. Alexander asked if the board would not have had the reserve if it had gone ahead with projects like the Twenty-Fifth Street project, which has been on the drawing board for many many years. He recalled that there had been a time when this area could have been brought on at full federal funding without any cost.

Mr. Levy said he couldn't answer that question but that if the money had been spent then there would be none today.

Councilman Taylor asked if any individual, in the area, could tap onto the sewer.

Mr. Levy said they could tap onto it.

Councilman Ritter said he had heard that if a resident lived outside the City they could not tap onto it.

Mr. Levy said that in his opinion the Public Service Commission would require that this be allowed; however, it can never be determined what the PSC might or might not do. This was merely his opinion, he said. In this particular case, in the county, the residents would have to cross the road which could be very expensive.

Mr. Tom McCallister, 336 W. 5th Avenue, distributed to Council information relating to Article 10, Section 8 of the Constitution of the State of West Virginia. He quoted

3RD READ ORD RE:  
LOAN AGREEMENT RELATIN  
SEWER REVENUE BONDS -  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM - CONT.

3RD READ ORD RE:  
LOAN AGREEMENT RELATING  
TO SEWER REVENUE BONDS -  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM - CONT.

Councilman Black asked that the City Attorney, Mr. Levy or Mr. Collins interpret this for Council.

Mr. Collins called attention to information he had with him, citing a case "United States vs. the City of Charleston." It stated that obligations incurred by a city under the authority of the West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not debts within the definition of the West Virginia Constitution containing limitations on the power of municipalities to incur debts.

Dr. Nazem Abraham, 534 N. Inwood Road, said there is a major problem and something needs to be done quickly. Raw sewage is pouring out onto the streets which then drains down into the creek in Ritter Park. He said he couldn't understand why it has been allowed to go this long.

Chairman Fields asked if Dr. Abraham was aware of the fact that if the project proceeds as proposed there will be approximately 25 homes that will not be on the system. There will still be pollution from those homes.

Dr. Abraham said it is a legitimate concern as to how and when the remaining houses will be brought into compliance but he didn't feel the entire project should be stopped until this happens.

Chairman Fields said it is unfortunate that there is a city-county line that must be considered, but he merely wanted the people to get their money's worth. He does want to see the project go forward; however, he is not in favor of the use of grinder pumps.

Dr. Homer Cummings, 2206 Inwood Drive said there has been an ongoing problem for many many years. In driving to the meeting this evening, Dr. Cummings stated that both he and his son noticed quite an odor on Shockey Drive as they passed through the area. Raw sewage was pouring out onto the road.

Mr. Joe Locascio, 636 Ridgewood Road, said that it is extremely important for the City Council to act expeditiously in order to get the sewer project started. He urged Council to act immediately.

Mayor Dean asked that she be permitted to read a letter from Mr. Grant McGuire who resides at 123 Ridgewood Road. She read as follows:

"I am happy to speak in favor of the sewer project for our neighborhood. In the event that I am late for the meeting tonight please read this letter into the record. I live at 123 Ridgewood Road. Our neighborhood would greatly benefit from city sewer service. Many houses in the neighborhood have old septic tanks which do not operate properly. I can smell raw sewage the year around on certain sections of McCoy Road and Ridgewood Road and I have seen untreated sewage water on those roads. I purchased my house about four years ago. I have a brand new water treatment system which works well; however, I have been in favor of the project from the start even when it looked as if each house would have to pay for the sewer. I know that a number of my neighbors share my view. Additionally, I am president of the Huntington Museum of Art which is on top of the hill on McCoy Road and the museum also would benefit greatly from the proposed project."

Mrs. Regina Zitter, 1638 Washington Boulevard, said that septic systems are not an asset to any community. She felt it to be time for the City to bring this area into the twentieth century.

Mr. Dick Yeager, 2102 Miller Road, said he has a septic tank that works fine. The Health Department has checked it and approved it.

Councilman Ritter said it appeared to him that even with this project, all of the raw sewage problems will not be corrected.

Chairman Fields told Mr. Ritter that this is the case since there are twenty-five residents, in the county, who will not be connected to the sewer system. Additionally, there are approximately thirteen or fourteen people who live on either Inwood Drive, Shockey Drive or McCoy Road who have also been eliminated.

Mayor Dean said that any of the people outside the City will be given the opportunity to be annexed into the City. Those who do not wish to be annexed into the city will be subject to the Cabell Huntington Health Department which will require them to tap onto the sewer. She said it is her understanding that when a sewer is available and a system is not working correctly that the Health Department has the right, legally, to force them to tap onto the sewer.

Chairman Fields remarked that if this were to happen the residents would then have to pay for the entire costs themselves.

Mr. Frank Gaddy, 125 Shockey Drive, said this same issue came up before the residents about fourteen years ago and at that time a sewer system could have been installed for about \$4,000 per household. About 25% of the neighborhood voted not to have it done. He implored City Council to adopt the ordinance since the problem needs to be addressed and corrected immediately.

Mr. Jim Cummings, 546 N. Inwood Drive, said that regardless of what happens with this project, there will be an increase in fees at some point. He commented that although the residents in his neighborhood get no benefit from the floodwall tax, they still pay it in order to help maintain the system for the City. He added that he didn't know if everyone in the City had paid for their own sewers.

Chairman Fields said he would vote for the project even if it cost one million dollars

Mr. Jim Ashworth, 562 N. Inwood Drive, explained that he is a civil engineer and has worked with various sewer projects throughout the region. He stated that, in his estimation, the project design as advocated is correct. A professional firm, Chester Environmental Protection and the Public Service Commission approved it and additionally, a third firm has agreed that the design is the correct one. He said there is no motivation for "designing the wrong design."

Chairman Fields said that all of the homes, on McCoy Road, south of Park Hills school have gravity systems.

Mr. Ashworth said that the only sewer he was aware of, on McCoy Road, was the one built by Mr. James St. Clair. That one drops down to Ritter Boulevard and Donald Avenue.

Chairman Fields said the homes above the park have gravity flow systems. He asked if the gravity flow system is not the best system.

Mr. Ashworth said if one lives on a ridge top and the house drains to the valley, then a sewer will have to be constructed on both sides to serve both sides of the ridge. Twice as much pipe will have to be installed. He said the terrain is not suitable for a gravity flow system.

Chairman Fields said he has talked to several engineers who told him a gravity flow system would be the better method. He added that a big portion of the system includes gravity plus grinder pumps. He asked if he was aware that one of the systems has gravity on it now and goes through the biggest fault that is on the hill, the one on the back side.

Mr. Ashworth said he was aware of that.

Mr. Frank Gaddy, 125 Shockey Drive, said that while a gravity system might be the better method, it is far too expensive. He suggested that such a system be designed to see if the City could afford it.

Mr. Bruce Churton, 310 Holswade Drive, explained that he is a member of the Sanitary Board as well as being a professional engineer. If a gravity flow system were designed, he maintained the state would not approve it nor did he believe the PSC would approve it. The only way to install a gravity system would be to sink the sewers extraordinarily deep or install two sewers behind each house. The additional cost would be more than \$1,000,000. The grinder pump system would be the best solution for this area.

Chairman Fields asked Mr. Churton if he was not against the grinder pump system initially.

Mr. Churton said he had been initially; however, after studying it extensively he now feels the grinder pump system is the only feasible solution.

Chairman Fields said about 43% of the project is figured for a gravity system.

Mr. Churton said that any sanitary engineer would put in a gravity system where it is feasible. The 43% is where it is feasible. The other 57% will not support such a system.

Chairman Fields said that a line is now being installed on Miller Road and all of the houses that are above the project that could use a gravity system are going to have a grinder pump system.

Councilman Hawkins suggested that the Chairman relinquish the chair to the Vice Chairman if he wished to continue the dialog.

Mr. Fields stepped aside and Vice Chairman Toney asked Mr. Fields to continue.

Mr. Fields asked Mr. Churton if the City would be solving the problem if residents just across the road are not being permitted to tap onto the sewer.

Mr. Churton said a sewer system is being installed for the City of Huntington.

Mr. Fields asked Mr. Churton if he remembered that the first project, proposed, included the residents outside the City. It was approved and submitted to City Council. Now, there is this one. He asked which one he was suppose to approve.

Mr. Churton replied "the one before Council now." The Public Service Commission said, at one point, there would be no surcharge. At this point it became a matter of principle. If there is to be no charge, it should not be extended to people who are not residents of the City. He added that if one to two million dollars were added to the cost of the project, it would not get it done.

Councilman Grubb asked Mr. Churton how many written reports he was aware of with respect to the validity of the design of this sewer system.

Mr. Churton replied that the Department of Environmental Protection has approved it twice and the Public Service Commission has approved it once. Chester Environmental has, of course, approved it and the last report, Mr. Churton said was from a company whose name he failed to remember.

Mayor Dean interjected that Mr. George McClennen, the City Engineer had approved it as well as Korda/Nemeth, the firm from Columbus, Ohio

Councilman Grubb asked to read a portion of the report from Korda/Nemeth into the record.

3RD READ ORD RE:  
LOAN AGREEMENT RELATIN  
SEWER REVENUE BONDS -  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM - CONT.

3RD READ ORD RE:  
LOAN AGREEMENT RELATING  
TO SEWER REVENUE BONDS -  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM - CONT.

Mr. Fields objected, on the grounds that the report is not a formalized report to the Council. He said he believed the Mayor would attest to this.

Mayor Dean said she could not agree with Mr. Fields, that it was received from the firm and while there is a further meeting scheduled with Mr. Korda the report is nevertheless a public report.

Mr. Grubb read from the report where it states the company investigated the potential use of other types of sewage disposal system, such as gravity or a combination gravity/lift station. "Gravity sewer installation would require deep excavations, even with the combination gravity sewer/lift station system. A strict gravity system is economically not viable and impractical, given the topography and site conditions." He then called attention to the two locations, previously referred to by the Mayor, that have used grinder pump systems successfully. "Both system managers reported low incidence of pump replacement, being particularly noteworthy of the Hot Springs system, where the pumps are ten years old. Pump replacement, where required, may be accomplished with one person and can be accomplished above the pump basin...." "We concur with the economic analysis presented in the Facilities Plan and find the unit prices and service life assumptions in order. We concur with the selection of a grinder pump pressure system. In our opinion, the system designed, if properly constructed and maintained, will provide years of reliable service." Mr. Grubb concluded by stating that every firm totally agreed with the present design.

Councilman Toney asked that Mr. Grubb state the name of the company.

Mr. Grubb said that it was from the Korda/Nemeth Engineering company in Columbus, Ohio.

Mr. Toney asked if a representative had visited the site.

Mr. Fields interrupted to say that the company has not visited the site.

Councilmember Barrett said she felt Council was getting far afield from the question before Council, which is the financing of the project. There are always reasons to disagree, but the facts have to be recognized. The people in the county asked to be removed when they thought it would cost them money. Now that they believe they will get it for nothing they want to get back on the system. The Health Department has been very lenient. It could shut down multiple septic tanks in the City and in the county. There have been reasons and reasons and reasons over the years not to do it and the terrible mess is still there. If it doesn't go through now it will cost more money and the Health Department will step in and shut the septic systems down.

Councilman Patterson said he hadn't said much, but he reminded everyone that a vote had been taken by Council to accept whatever the most recent report stated. Everyone on Council, with the exception of him, voted to accept the report. However, after listening to the discussion he said he did agree with the report and felt the project should go forward.

Mayor Dean said she wanted to accept what the professional engineers had recommended since they obviously know what they are talking about. She noted that two other engineers had spoken, briefly, during this meeting... Mr. Frank Gaddy and Mr. Jim Ashworth. She concluded with an old expression "there is no point in keeping a dog and barking yourself." She said she fully intended to keep a dog and not bark herself.

Councilman Alexander asked that Mr. Greg Menniti step forward.

Mr. Menniti explained that he is the Vice President of the mid-south region for Chester Environmental whose offices are at 401 Eleventh Street. He stated that his firm has been in the sewer and water distribution business for eighty-five years.

Dr. Alexander asked the length of the useful life of a septic tank system. He said he didn't want the public to think that if they have a septic tank that they are in serious trouble. He asked if such a system is an acceptable one.

Mr. Menniti explained a septic system in the right application can adequately treat the sewage from a home. A septic system in the Inwood-Shockey area, because of many factors, is not advisable. It has been proven not to work.

Dr. Alexander asked if these systems did not have to be pumped out regularly.

Mr. Menniti replied that they do need routine maintenance. Gravity systems also need routine maintenance. He stated that the Health department had gone out to the area and tested 25% of the septic tanks. None were acceptable.

Councilman Taylor asked if the people would be forced to use a grinder pump system if they could actually use a gravity system.

Mr. Menniti answered that his firm designed the project with part of the area being gravity and part of it being grinder pumps. Those areas where it's not feasible to put gravity systems in, then a practical system is used and in this case it is grinder pumps.

Councilman Fields said the people from Korda/Nemeth Engineering have not walked through the project and have not put a cost analysis together. They analyzed what Chester Engineering sent to them. He said there are other engineers who have walked the site and have told him that "you are getting shammed out here, people." His only intention, he said, was to do the right thing for the people.

Councilman Ellis said the sewer system is needed. For many years this has been delayed. However, to allow this system to be put in without the residents paying for it is wrong. All of the citizens in Huntington will have to pay for this.

Mayor Dean said the people in attendance this evening are the ones who are willing to pay for the sewer. It was the PSC that said the Sanitary Board/City must pay for it.

✓ Motion to adopt this Ordinance carried nine (9) yeas; two (2) nays - Ellis, Taylor.

The Vice Chairman then stepped down.

Chairman Fields apologized to everyone if he "got a little out of hand" but he felt this to be an extremely important issue.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING SECTION 533.12 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON, AS REVISED, REGARDING TICKET SCALPING.

Mayor Dean stated that this ordinance had been requested in writing by the Athletic Director at Marshall University, Mr. Lee Moon. She added that Councilman Ellis had also had a conversation with Mr. Moon. This adds a section onto the ordinance which is already a part of the City Code. Ticket scalping is already prohibited but this will prevent the resale of any ticket within a 500' radius of the place where the athletic, amusement or entertainment event is going to take place. This applies to not only the Marshall University stadium but also to other places of entertainment such as the Civic Arena or the Keith Albee Theatre. A copy of the ordinance was forwarded to Mr. Moon who indicated this would solve the problem for the University. Mayor Dean said she would like to read into the record a portion of the letter from Mr. Moon.

"A rationale for implementing the proposal is to stop the networking between the resellers and the young children they use as pawns in this game. With a number of these scalpers having drug convictions I would hope that cutting the chain of children may in some way reduce the potential for more dangerous crime networking. As someone who has observed their methods for many years I think you would be appalled at the treatment of some of these kids."

Mayor Dean said there is much more involved than merely preventing the resale of tickets.

Councilman Grubb asked if the Police Department could furnish information to City Council by the next Council work session in order to further enlighten the members. If this ordinance were to be adopted and someone wanted to sell a ticket they had purchased to see a movie they could not.

People do have changes of plans and often wish to sell their tickets to someone else.

Mayor Dean said she would be happy to have either Mr. Moon or representatives from the Marshall University Athletic Department at the next work session. She added that Mr. Grubb's example of purchasing a ticket for a movie was a bit ludicrous in that one purchases a ticket for the movie as they enter. A ticket to an event such as a football or basketball game is purchased in advance because these sell out.

Councilman Hawkins asked the city Attorney if he had received any examples of this occurring in other cities.

Mr. Fred Staker, City Attorney, said he had not received any. He had received a request to prepare the ordinance from Mayor Dean and Councilman Ellis.

Councilman Hawkins said that scalping is selling a ticket for more than it is worth. He felt he should be allowed to sell a ticket, to a Marshall game, if he couldn't get to the game. He added that there had been many games that he couldn't have attended if someone had not sold him a ticket.

Councilmember Barrett said she questioned the heading of the ordinance since it says "ticket scalping." She said it appeared to her that if someone sold a ticket for an event that they would be scalping.

Councilman Toney said he couldn't support the ordinance. He felt a citizen should have the right to sell a ticket if they so desired.

Motion by Councilman Toney, seconded by Councilman Alexander, to table this Ordinance. The motion carried ten (10) yeas; zero (0) nays; one (1) absent - Taylor.

Dr. Alexander, at this point, asked the Chair to excuse him explaining that he had learned of a maintenance problem at home just prior to the meeting and needed to leave in order to make necessary repairs.

First Reading of an Ordinance re: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, AS A PART THEREOF, BY ZONING TO I-1 LIGHT INDUSTRIAL FROM R-4 TWO FAMILY RESIDENTIAL PROPERTIES LOCATED ON THE WEST SIDE OF THE 700 BLOCK OF 31ST STREET, PARCELS 69-74, LOTS 16-20, BLOCK 288, MAP 22.

Mayor Dean said this rezoning will allow the construction of a fuel stop, a convenience store, and the expansion of a lube shop. She noted this has been approved by the Planning Commission. She deferred to Mr. Richard Dixon, Planning Director for further explanation.

Councilman Patterson asked Mr. Dixon how this fits into the Comprehensive Plan.

3RD READ ORD RE:  
LOAN AGREEMENT RELATI  
SEWER REVENUE BONDS-  
BONDS TO FINANCE THE  
INWOOD-MCCOY SEWER  
SYSTEM - CONT.

1ST READ ORD RE:  
TICKET SCALPING

1ST READ ORD RE:  
CHANGE ZONING TO LIGH  
INDUSTRIAL FROM TWO  
FAMILY RESIDENTIAL ON  
WEST SIDE OF 700 BLOC  
OF 31ST STREET

1ST READ ORD RE:  
CHANGE ZONING TO LIGHT  
INDUSTRIAL FROM TWO  
FAMILY RESIDENTIAL ON  
THE WEST SIDE OF 700  
BLOCK OF 31ST STREET -  
CONT.

1ST READ ORD RE:  
AMEND ZONING ORDINANCE  
BY ZONING TO R-5 MULTI  
FAMILY RESIDENTIAL FROM  
R-3 SINGLE FAMILY  
RESIDENTIAL PROPERTY  
LOCATED 216-222 RICHMOND  
STREET

1ST READ ORD RE:  
AMEND ZONING ORDINANCE  
BY ZONING TO R-4, TWO  
FAMILY RESIDENTIAL FROM  
R-3 SINGLE FAMILY  
RESIDENTIAL PROPERTY  
LOCATED AT INTERSECTION  
OF BRADLEY ROAD &  
MANSFIELD STREET

1ST READ ORD RE:  
ABANDONMENT PORTION OF  
FIRST AVENUE OUTSIDE  
EMERGENCY ROOM ENTRANCE  
OF ST. MARY'S HOSPITAL

Mr. Dixon replied that in the present Comprehensive Plan this area is designated as residential; however, when the plan was written in 1981 this area was a dead end unimproved street. It is now a five lane U.S. highway and for that reason the Planning Commission voted to rezone. In the proposed Comprehensive Plan, not yet completed, it is recommended that this land be rezoned in order to allow commercial development.

Councilman Patterson asked if there had been any comments by the public.

Mr. Dixon said there had been several public hearings, some of which were well attended and some of which were not.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, AS A PART THEREOF, BY ZONING TO R-5 MULTI-FAMILY RESIDENTIAL FROM R-3 SINGLE FAMILY RESIDENTIAL PROPERTY LOCATED 216-222 RICHMOND STREET, PARCELS 197-200, MAP 13.

Mayor Dean advised that this will permit the construction of a four unit apartment building on a vacant lot on Richmond Street.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, AS A PART THEREOF, BY ZONING TO R-4, TWO FAMILY RESIDENTIAL FROM R-3 SINGLE FAMILY RESIDENTIAL PROPERTY LOCATED ON THE FORMER B&O RIGHT-OF-WAY AT THE INTERSECTION OF BRADLEY ROAD AND MANSFIELD STREET.

Mayor Dean stated that while this would allow the construction of a duplex on the property the Planning Commission staff has been instructed to review the entire length of the former B&O right-of-way and to present to the Planning Commission its recommendation for future development. This site is not in the middle of the B&O right-of-way; it is in an area that would almost seem to be separate and apart from that. In view of the fact that new housing is needed in the City, she hoped Council would approve it.

Councilman Patterson asked how this meshes with the proposed Comprehensive Plan and if there has been public input.

Mr. Richard Dixon, Planning Director, said the entire length of the right-of-way is for the most part zoned single family residential. However, this type of development is not conducive to being next to a U.S. highway. The purpose of the study of the right-of-way will be to develop the best possible land use. There has been no opposition at all to this request for rezoning.

Councilman Grubb said he would like to see a park there, adding that he believed a number of citizens in that area would also like that. However, there's never been the money to do this. He hoped there might be a way to find money in the future so that a highway rest stop could be constructed which would also meet the criteria of a residential park.

Councilman Ritter said the reason that citizens were not opposed to this is because what is proposed matches what is already there. He said he voted for the variance to grant permission to build a residence there. His problem, he said, is the proposal to change the zoning. People who purchased the property, years ago, knew it was zoned R-3 which meant they could not build on it, but spot zoning has continued through the years. He suggested tabling it until the entire plan is known.

To delay this, Mayor Dean explained, would cause a hardship for Mr. Wiles who owns the parcel in question. Additionally, there is a definite need for more housing.

Councilmember Barrett said she didn't think this should be put aside since it sends a bad signal to other people who want to develop housing. The supply of housing has been reduced and this cannot continue.

Motion by Councilman Ritter, seconded by Councilman Patterson, to table this Ordinance. The motion failed six (6) nays; three (3) yeas - Patterson, Ritter, Fields; two (2) absent - Alexander, Taylor.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE VACATING, CLOSING AND ABANDONING A CERTAIN PORTION OF FIRST AVENUE IN THE CITY OF HUNTINGTON, CABELL COUNTY, WEST VIRGINIA RUNNING IN A NORTH-SOUTH DIRECTION BETWEEN FIRST AVENUE ON THE SOUTH AND THE WEST LINE OF A 20 FOOT ALLEY LYING TO THE WEST OF LOTS 127 TO 141 INCLUSIVE, AS SHOWN ON THE SUPPLEMENTAL MAP OF THE CEDAR GROVE SUBDIVISION, IN THE CITY OF HUNTINGTON, CABELL COUNTY, WEST VIRGINIA.

Mayor Dean advised that this very small triangle of land, immediately outside the emergency room entrance to St. Mary's Hospital, belongs to the city. The hospital is requesting an abandonment in order to make the access to their emergency room more viable.

THIS ORDINANCE WAS ADVERTISED.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AUTHORIZING THE MAYOR TO EXECUTE A DEED CONVEYING CERTAIN REAL PROPERTY LOCATED AT EIGHTH AVENUE AND SEVENTEENTH STREET WITHIN THE CITY OF HUNTINGTON TO THE HUNTINGTON URBAN RENEWAL AUTHORITY.

Motion by Councilman Patterson, seconded by Councilman Grubb, to table this Ordinance.  
The motion carried eight (8) yeas; one (1) nay - Toney; two (2) absent - Alexander, Taylor.

1ST READ ORD RE:  
CONVEYING PROPERTY LO  
AT 8TH AVE & 17TH STR  
TO HURA.

Resolution re: A RESOLUTION FOR THE REVISION OF THE FISCAL YEAR 1995-1996 GENERAL FUND BUDGET.

WHEREAS, the Council of the City of Huntington, Counties of Cabell and Wayne, has found it necessary to revise the fiscal year 1995-1996 Levy Estimate, and

WHEREAS, these various adjustments are made on West Virginia State Tax Commissioner Forms LGR: BR1180 which are attached hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Huntington, Counties of Cabell and Wayne, that the Finance Director be and is hereby directed to submit a copy of the revision to the State Tax Commissioner of the State of West Virginia for his approval, under the provisions of Chapter II, Section 8, Articles 146, 25 and 26a of the Code of the State of West Virginia.

Motion by Councilman Toney, seconded by Councilmember Barrett, to adopt this Resolution.  
No vote taken at this time.

RESOLUTION RE:  
REVISING FY-95/96 GEN  
FUND BUDGET

Mayor Dean deferred to Mr. Glenn White, Finance Director for explanation.

Mr. White said \$60,000 is being allocated to continue the STOP (Safe Traffic Operation Program) grant for 1996. There will be an increase in the appropriation for transfers from CDBG, for Community Policing, from \$37,000 to \$60,000. This will free up funds to cover the lease payments for the eight new police cruisers purchased this year. Additional funds in the amount of \$17,210 are being appropriated for storm sewer maintenance, Convention and Visitors Bureau and ambulance contributions to cover the projected expenditures in this fiscal year.

Motion to adopt this Resolution carried nine (9) yeas; zero (0) nays; two (2) absent - Alexander, Taylor.

GOOD AND WELFARE -

GOOD AND WELFARE

Chairman Fields apologized to Council members for "stepping out of line" earlier in the meeting. He said that while he might disagree professionally, he meant nothing personally by his comments.

Councilman Ritter wished everyone a very Merry Christmas since the next Council meeting will be after Christmas.

Miss Hazel Parker, 1115 - 22nd Street, said it had occurred to her with reference to the Inwood-Shockey project that when one compares the idea of using cash on hand and borrowing money the end result is very different. If cash is used then one asset, cash, is being traded for another one, the sewer system. If money is borrowed then one asset, the sewer system is being added to another asset, cash. Wealth is being gathered. If fees are going to be raised to accumulate the wealth, then this might be taken into consideration.

Hearing no other business to come before this Council, the Meeting was adjourned.

  
DALLAN FIELDS, CHAIRPERSON

  
ANN C. SHAYE, CITY CLERK

S Y N O P S I S  
HUNTINGTON CITY COUNCIL  
November 10, 1997

The November 10, 1997 Huntington City Council meeting convened at 7:30 p.m. with Chairman Patterson presiding.

The Invocation was given by Councilman Kent and the Pledge of Allegiance was led by Councilman Bobersky.

All members of Council were present. Also in attendance were Mayor Jean Dean, Mrs. Jendonnae Houdyschell, City Attorney and Mrs. Ann Shaye, City Clerk.

Councilman Kent made a motion to approve the synopsis as submitted. Councilman Bobersky seconded the motion. It was approved as submitted. (unanimous)

Mayor Dean advised that she had no special reports. She distributed copies of the October 16, 1997 Sanitary Board minutes.

Councilman Bobersky made a motion to waive the rules to hear item no. 8 on the agenda; seconded by Councilman Ellis.

The motion carried. (11 yeas; 0 nays)

Resolution re: A RESOLUTION OF COUNCIL AND THE MAYOR DECLARING FRIDAY, NOVEMBER 14, 1997 AS "OPERATION BEST DAY" WITHIN THE CITY OF HUNTINGTON.

Councilman Bobersky made a motion to adopt; seconded by Councilman Ellis.

Mrs. Neely asked that the resolution be read into the record.

The City Clerk read as follows:

" WHEREAS, Operation BEST (Business & Education Succeeding Together) was started in December, 1995 by a group of businessmen, educators and community leaders, including the following: R. F. Smith, Jr. David Mohr, A. Michael Perry, Jerry Brewster, Dan Lacy, Dr. Bill Cunningham, David Todd, Barbara Harmon Schamberger, Matt Miller and Thom Nash; and

WHEREAS, the Operation BEST program was designed to increase the mutual understanding of the needs of business and education in order to prepare the students of Cabell County to enter the work force; and

WHEREAS, these volunteers and other teachers established the first class of 53 students at Huntington High School; and

WHEREAS, participation in this program has more than doubled and has also expanded to include West Middle School; and

WHEREAS, the first group of graduating seniors from this program found 100% placement in work, college or the military with over 3/4 of those entering college enrolling at Marshall University; and

WHEREAS, the first year's evaluation of this program pointed out that it was a national model providing employment preparation that filled an unmet gap in the community, highlighting its partnership between government, business and education; and

WHEREAS, the program provides students with real world experiences while still in school which allays their fears of entering the work force while simultaneously building their self confidence; and

WHEREAS, the Council and the Mayor hope that this program can expand and grow in the future to assist many more students in their preparation to enter the work place; and

WHEREAS, coaches Jim Grobe of Ohio University and Bob Pruett of Marshall University will meet face-to-face at St. Mary's Hospital on Friday, November 14, 1997 at 7:00 o'clock p.m. to support this program in its efforts to raise funds as well as provide an opportunity for a pre-game glimpse of their coaching strategies,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AND THE MAYOR OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that the Council and the Mayor do hereby PROCLAIM Friday, November 14, 1997 as "Operation BEST Day" within the City of Huntington.

BE IT FURTHER RESOLVED that the Council and the Mayor do hereby ENCOURAGE and SUPPORT the continued success of this program and wholeheartedly ENDORSE its adoption and implementation into the entire education system in our community and throughout the State of West Virginia."

Mayor Dean reiterated that on Friday, from 7:00 p.m. until 8:30 p.m. in the new outpatient center at St. Mary's Hospital this encounter between the two coaches will take place prior to the game on Saturday. This will be done as an indication of support for Operation BEST. She deferred to Mr. Thom Nash for further explanation.

Mr. Thom Nash, 911 3rd Street, West speaking as the Executive Director of the program expressed his appreciation. He explained the program has been and continues to be very successful. He asked the students to stand and be recognized.

The resolution was adopted. (11 yeas; 0 nays)

Second Reading of an Ordinance re: AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, WEST VIRGINIA, 1960, AND THE ZONE MAP ATTACHED THERETO AS A PART THEREOF BY REZONING TO B-1 LOCAL BUSINESS PROPERTY LOCATED ON THE NORTH SIDE OF THE 2100 BLOCK OF 8TH AVENUE, TAX MAP 32, PARCELS 9-20. (Postponed)

Councilman Bailey made a motion for adoption; seconded by Councilmember Neely.

Mayor Dean stated that this matter appeared before the Planning Commission and was subsequently turned down. The petitioner appealed to Council for a public hearing.

Councilman Ritter asked why the commission turned it down.

Mr. Richard Dixon, Director of Planning, explained that a petition was submitted, during the meeting, by those in opposition. While the commission recognized that 8th Avenue may, at some point, become more commercial in nature it felt the rights of the residents should be protected.

The Chairman asked that the petitioner address City Council members.

Ms. Nancy Stanley, 1027 26th Street, explained that the realtor who had located this property told her that it was zoned commercial. She felt the proposed business would be an asset to the neighborhood. The merchandise would be sold at a very reasonable rate and would provide items for those less fortunate.

Councilmember Neely asked if the area in which the business would be located was comprised of property owners or those renting property.

Ms. Stanley explained there were 11 property owners, adding that seven had signed the petition in support of her request.

Mrs. Neely commented that she had looked at the area and noted that across the street there is a bowling alley, on the north side there is a business and in the 2000 block there are more businesses. It is not a strictly residential neighborhood.

Councilman Cline asked Ms. Stanley if she had searched for property in other areas when she learned that some of the residents did not want the business.

Ms. Stanley said she had been looking but that particular area met her specific needs.

Mr. Cline remarked that he had suggested, some time ago, that people who wanted to open businesses should be provided with an informative booklet which would explain all guidelines before opening a business.

Councilman Bobersky asked what type of merchandise would be sold.

Ms. Stanley answered that she would have inexpensive clothing, crafts.

Councilmember Maass asked if renters or property owners had signed her petition and if the merchandise would be new or used.

Ms. Stanley said that only property owners had signed the petition since she had been instructed to go to the owners. The merchandise would be essentially new.

Mrs. Neely asked what kind of parking would be made available.

Ms. Stanley replied that she would provide parking at the rear of the building.

Councilman Ellis noted that the petitioners opposed to the business, for the most part, lived on 21st and 22nd Streets.

Mrs. Sandy Hand, 2744 Orchard Avenue, said that she owned property at 825 21st Street. She submitted a petition in opposition to the rezoning. She expressed her concerns over the loss of homes in the area if businesses were allowed to come into the community. People left the neighborhood when the bowling alley was built in the 1960's; she did not want to see that happen again. She urged Council to defeat the ordinance.

Councilman Ritter asked if there were plans for the expansion of 8th Avenue, under the Comprehensive Plan and if so would that involve the property under consideration.

Mr. Richard Dixon, Planning Director, answered it would not necessarily involve that property but if it were widened the traffic would be increased greatly.

Mrs. Amy Searls, 2128 8th Avenue, submitted a withdrawal of support from one of the residents who formerly supported the issue. Mrs. Searls expressed her deep concerns about the proposal stating she felt the added traffic, parking would endanger small children in the neighborhood. She added that the properties in question have been condemned and nothing has ever been done with respect to demolishing the houses.

Mayor Dean stated the houses are on the demolition list of the Unsafe Buildings Commission.

Mr. Charles Beckett, 2052 10th Avenue, said that he had understood the plan would be to rezone 8th Avenue to 26th Street.

Mr. Richard Dixon said the north side of 8th Avenue from 20th Street to 26th Street would be zoned for commercial use, under the Comprehensive Plan.

Mr. Beckett said he understood the concerns of the people but he felt rezoning would make their property more valuable.

Miss Hazel Parker, 1115 22nd Street, said she had read the Comprehensive Plan and that the north side of 8th Avenue is planned for commercial usage. She felt the situation to be very unfortunate and questioned if the general area would remain, over time, as a residential neighborhood.

Mayor Dean suggested that Council look westward of 20th Street where there were quite a number of dilapidated houses. Now there are some new homes that have been built. She felt it was a grave mistake to reduce the housing stock.

Ms. Nancy Stanley, 1027 26th Street, reiterated her former statements that she wanted to benefit the community.

Councilman Kent asked what this would do to the entire block.

Mr. Richard Dixon, Planning Director, answered that it would change the entire block, with the exception of the last 60 feet on 22nd Street which is already zoned light industrial.

Chairman Patterson asked for a definition of B-1 zoning.

Mr. Dixon stated it would allow local business - retail, a gas station, a convenience store, any office use. It would not permit warehousing, a bar, a trucking company.

Chairman Patterson asked about the requirements for parking with respect to this issue.

Mr. Dixon said it would require one space per 125 square feet.

Councilman Ritter asked what the staff's recommendation had been.

Mr. Dixon answered that, in accordance with the Comprehensive Plan, it recommended rezoning.

Ms. Lavada Taber, 2135 10th Avenue, explained that she would fall under the definition of those with low incomes. Further, Ms. Stanley provided a shop that would help those less fortunate - permitting people to receive goods and to pay as they could. She knew of no other store that would do that and because of the number of people in need she hoped Council would approve the rezoning.

The ordinance was defeated. (8 nays; 3 yeas - Ellis, Jackson, Neely)

Before continuing Mayor Dean stated that, with reference to the booklet Councilman Cline had recommended earlier, the Administration is moving forward with this. One of the employees who is on extended sick leave is working on this project at his home.

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING SECTION 20 OF THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, AS REVISED, BY AMENDING,

MODIFYING AND RE-ENACTING SECTION 20 (F) REGARDING SPECIAL EXCEPTIONS.

Councilman Bailey made a motion to adopt; seconded by Councilman Kent.

No vote was taken.

Councilman Cline made a motion to table the ordinance; seconded by Councilmember Jackson.

The motion carried. (11 yeas; 0 nays)

First Reading of an Ordinance re: AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING SECTION 21 OF THE ZONING ORDINANCE OF THE CITY OF HUNTINGTON, AS REVISED, BY AMENDING, MODIFYING AND RE-ENACTING SECTION 21 (B) REGARDING NONCONFORMING USES SPECIFICATIONS.

Councilman Bailey made a motion to adopt; seconded by Councilman Kent.

No vote was taken.

Councilman Kent made a motion to table the ordinance; seconded by Councilman Ellis.

The motion carried. (11 yeas; 0 nays)

✓ Resolution re: A SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE, AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1997, (WEST VIRGINIA SRF PROGRAM); OF THE CITY OF HUNTINGTON RATIFYING AND APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

Councilman Kent made a motion to adopt; seconded by Councilman Cline.

Mayor Dean explained that this resolution is the final step in the financing of the Inwood sewer project. The exact figure in the resolution is \$3,039,000 and it will be borrowed from the state revolving loan fund at a 3% interest rate. The payments will be made quarterly, beginning in June, 1998. The final payment will be made in March, 2019. She called attention to a letter from the Department of Environmental Protection confirming that the loan has been approved. It also outlines how the monies will be used - construction, legal costs, etc. She pointed out the engineering costs are not included. In July, 1997 Council approved the Resolution of Intent as requested by the state. She noted that the bond counsel, the executive director of the Sanitary Board, the other member of the Sanitary Board and the legal counsel for the board were present for any questions.

Councilman Kent said it made good sense to him to proceed with the adoption of the resolution because if it were not approved there will not be sufficient revenues available to the Sanitary Board to undertake necessary sewer improvement projects in the city. He felt it important that Mr. Vince Collins, bond counsel, explain for the benefit of the public what the consequences will be if the resolution is not adopted.

Councilman Cline echoed Dr. Kent's comments - to go this far and not approve the resolution would be very foolish.

Councilman Bobersky remarked that he believed, due to certain problems that had occurred in the past, that there were some who wished to "punish" the Sanitary Board for the Inwood/Shockey project. This would punish all of the citizens in the city. The city must move forward and put the past behind.

Mr. Bob LeTendre, 2095 Miller Road, said that he did not feel there was any animosity insofar as punishment of the Sanitary Board - the problem has always been a matter of law. The approval of this bond will not pay for all of the projects that need to be done. He stated he had learned that other applications have been made, to the West Virginia Infrastructure Council: for the Guyandotte project for 2 million dollars, another application for the SCADA project for 2.7 million dollars and for the Chlorination project for 2.8 million dollars. All of these will require additional rate increases. He mentioned a portion of a letter from the law offices of Steptoe & Johnson in which it said that one of the remaining requirements was a letter from the board's accounting firm regarding the parity test and required rate coverage. He read from a letter signed by Mr. Jerome Hayfligh, CPA, in which he said that the current rates will provide all that is necessary and have at least 120% of the minimum requirement for the bond. According to that the board is not in the position that the executive director has said that it is - in dire need of funds. He stated he had met with Ms. Sammee Gee, bond counsel with the law firm of Jackson & Kelly, earlier in the day to make her aware of these matters. Following the hearing conducted by an administrative law judge in which it was determined the pipe was not put in according to specifications, he met with two engineers along with an attorney from the Public Service Commission who inspected sections of the electric on the project. This was not installed according to the BOCA Code. The city has not produced any inspection slips to show there were any inspections made. He maintained laws have been broken.

Councilman Bobersky asked Mr. LeTendre if he was an attorney who would be knowledgeable about the law being broken.

In response, Mr. LeTendre said he was not, but he had spoken with the PSC's staff attorney.

Mr. Bobersky pointed out that in the audience there were attorneys who had not told him he would be violating any law.

He asked if anyone had given him a legal opinion that in adopting this resolution it would be a violation of law.

Mr. LeTendre answered that the Public Service Commission's staff attorney had so stated.

Councilman Kent asked the names and if they specifically said the adoption of this resolution would be in violation of the law.

Mr. LeTendre referred to the hearing conducted by the administrative law judge.

Councilman Kent stated that had nothing to do with this resolution and that Mr. LeTendre was misleading City Council.

Councilman Bobersky asked if he were not trying to punish the Sanitary Board.

Mr. LeTendre answered he was not, he was merely pointing out the project was carried out illegally.

The Chairman asked Mayor Dean if she wished to respond.

Mayor Dean answered that she found nothing in what Mr. LeTendre had said that would make her want to respond since it was the usual "mix and match of legal, illegal, criminal, etc." She did not wish to respond to that.

Mr. Gil Vanderkraats, 547 N. Inwood Drive, commented that he felt a lot of people had been put in a position of being "between a rock and a hard place" and that he had a body of information that others had not seen. He felt there had been a wrong committed and his intention, with Mr. LeTendre, was to "right that" and do something for the public. He maintained there was nothing in this issue, on a personal level, for him. He said he had no sense of vindication, he merely felt very strongly about the issue. He asked if Mr. Collins would respond to the matter about adhering to the specifications of the contract. He said the electric should have been buried 18" in the ground and the Public Service Commission's engineers and attorney saw that it was only 4" - 6" (sometimes a little higher) in the ground. The specifications also called for a cap (a 12" area of concrete with rebar) and this has not been installed. According to the requirements of receiving the loan the specifications must be followed. It has been shown that some of the specifications have not been adhered to and in view of that he questioned how the bond counsel would permit this to go through.

Mr. Vince Collins, bond counsel, Steptoe & Johnson said that the borrowing of the money is legal and the opinion will be rendered, at the time of closing, to the effect that all procedures have been properly followed and that the issuance of the debt is legal by the city. Regarding the plans and specifications not being followed, or wrong plans and specifications the Department of Environmental Protection has determined that any discrepancies will be waived, as a

condition to making the loan. Therefore, there is no real problem.

Mr. Marvin Fuller, 1438 Harvey Road, stressed the importance of adopting this resolution since unless this done the citizens on Orchard Avenue will not get a sewer system. He urged Council to proceed and approve the resolution.

Councilman Bobersky asked Mr. Fuller to confirm that he was in attendance at a meeting held earlier in the evening at which time there were complaints about the fumes that are omitted in the west end of the city. The chlorination project needs to be done.

Mr. Fuller confirmed that to be true and added that the people in the Harveytown area had been neglected for such a long time until Mayor Dean took office and started the neighborhood groups. Now, they have a voice, he said.

Miss Hazel Parker, 1115 22nd Street, said she recalled that at one time there was money on hand at the Sanitary Board and there was a list of projects, prioritized. The question then was "why don't you spend the money and get these projects done." The answer was the board was using the interest from the money. If the resolution is adopted, is there any assurance that the projects will be done or will the money be held back to be used for operating expenses.

Councilman Bobersky said the state had mandated that some of the projects be done.

Councilman Kent asked that Mayor Dean respond to Miss Parker's question.

Mayor Dean said at least two projects have been mandated by the state and will have to be done. There are three repair projects that will have to be done. The Orchard Avenue sewer project could be a matter of discretion. Primarily, the projects referred to are mandated projects.

Miss Parker said that ultimately the financing will come from the pockets of the citizens. She wondered if this would precipitate an exodus of people from the city if the rates climbed too high.

Mayor Dean said there would be an approximate amount of \$1.50 per month between whether or not the 3% money is accepted. As to what the actual rate increase will be, if the resolution is adopted, she believed it might possibly be in the neighborhood of \$5.00 per month.

Miss Parker asked if the resolution were approved, would that mean there would be no effort to recoup the money from those who made the decision to go ahead with the project - without Council's approval at that time.

The Chair said he had not heard any conversation about that; therefore, he would not think so.

Mr. Jim St.Clair, 1805 McCoy Road, thanked Council and the Mayor for the new sewer. He reminded Council that it has a stewardship obligation to the city and 3% money is an excellent opportunity to do that. He calculated that if the money were not spent, and invested at 6%, that there would be a return of \$90,000 annually. He pointed out that the sewers in the city are in terrible condition and he urged Council to adopt the resolution. He was sorry that some felt the project was illegal; however, if Steptoe & Johnson were willing to put \$3,000,000 behind the project and say that it is legal, that was enough for him. If it would turn out it was illegal, that firm would have to pay for it, not the city.

Councilman Bobersky said he had spoken with a number of residents in that district and he had heard nothing but praise about the sewer system. He asked if anyone, that he knew, was opposed to the system.

Mr. St. Clair answered that everyone was excited about it.

Mr. Bill Evans, 201 Green Oak Drive, said that he heard someone say, earlier in the day, "let's forget about the past and move forward." The Sanitary Board needs money and even with the approval of this resolution there will probably still be a rate increase. Council should not pass up the opportunity to get an interest rate of 3%, especially for the betterment of the city.

Mr. Ron Napier, 17 County Road, Proctorville, Ohio explained as an employee of the Sanitary Board that unless the resolution is approved the very minor repairs won't even get done. It is critical to pass the resolution for the Sanitary Board.

Mr. Matt Pinson, 701 Ridgewood Road, said he agreed that the sewer systems in Huntington are in dire need of repair. He stated he had run, on that very issue, for City Council and had won his district. He felt the problem was not that his area needed a new sewer system but the manner in which it was done. He said an on/off switch had been placed on his house which turns off the power to his home. He felt this to be another example of a poor project. His concern was that if the bond money were received that the same kind of work would be done on other projects, not meeting the specifications.

Councilman Ellis asked why the switch, he mentioned, was put on his house. It should only control the pump.

Mr. Pinson said he had called the City Attorney, the Sanitary Board, a number of electricians, Chester Engineers, etc. and he hadn't received a straight answer. However, according to Chester Engineers and the Sanitary Board it was placed there in case the home owner would not pay his electric bill - there would still be electricity to run the sewer system. Who would pay for that, he asked.

Councilman Ritter said it was his understanding, at the time of passing the Resolution of Intent that all issues pertaining

to the issue would have to be resolved before proceeding. The item has not been resolved "across the street." He asked if that had not been said.

The Chair said as he recalled that this had been discussed. He deferred to Mayor Dean.

Mayor Dean said that in the conversations between the Chairman (as the chair of the subcommittee) and Mr. Bob Trocin as to the resolution of the differences, they have (in theory at least) been waiting for Mr. Ben Bryant (Council's attorney) to reduce it to writing and return that to Council for approval.

Chairman Patterson said he believed that Mr. Bryant and Mr. Peoples were to meet with the City Attorney.

Mrs. Jendonnae Houdyschell, City Attorney, said she had been contacted by Mr. Peoples and a meeting has been scheduled to discuss the adoption of certain ordinances.

Mr. Ritter asked if Council would have any control over how the money is spent, if the resolution were adopted. He commented that in other cities such as Beckley, Grafton, Princeton, Charleston, West Virginia the Council approves the Sanitary Board's expenditures. The former Council turned down the project because there were too many questions that were not answered. There were many accusations about how the engineering was done, by Chester Engineers. There were questions about the firm that put in the grinder pumps. There is a city ordinance that states all contracts must be brought before Council. The Inwood Shockey project was not brought before Council before the contracts were let. He had also been concerned that the residents in that area were getting the sewer system free. He said he was still opposed to the issue.

Chairman Patterson said the Mayor had said the engineering fees would not be included in the amount being borrowed.

Mayor Dean confirmed this was the case. She reminded Mr. Ritter that the problems he had concerning the engineering firm took place before she became the Mayor and before this Council and the former Council. She said she was very very tired of cleaning up the messes left behind. She added she does not control the Public Service Commission; when it states that the Sanitary Board must provide free sewer systems to citizens, even those outside the city, then that must be done. That, she said, was no more acceptable to her than Mr. Ritter. Recognizing Mr. Ritter's discontent with the project she stated that "the point is the sewer is in the ground; it is operational and we either pay for it or let me tell you what is going to happen if we do not accept this \$3,039,000 at 3% interest. First of all the projects you have on the sheet in front of you will not be able to be undertaken. Some of those are mandated projects so that if we are not voting for this we are actually voting to remain in violation of the orders. We will be fined for that and we will not only have to find the money somewhere for the projects -- but for the fines. Not only that, but the state won't favorably review any further

applications from the City of Huntington or the Sanitary Board. That's why they asked the Council to pass a resolution of intent back in July, of intent to complete the project. And thirdly, and this is no means a scare tactic - but you need to know that today I instructed Mr. Phil Hearn, the superintendent of the treatment plant to come up with a contingency plan, an emergency plan that we might have to implement, if in fact we do not obtain this \$3,000,000. We will have to lay off Sanitary Board employees; we will have to work with the barest minimum in order to keep that plant open for as long as we can. After that I don't know what happens - if there is some other plan that somebody else has then they need to share it with me. I apologize if you are upset with the Sanitary Board, with me, the method of operation; but nevertheless, as Mr. St. Clair has said 'the sewer is in the ground' and 180 homes that didn't have sewers before have them now. I think that is essential to the public health of this city"!

Councilmember Maass said that what she was seeing was an effort to continue to bring up issues about which facts are either being misrepresented or half/truths are being told. The people in Harveytown need sewers. Citizens in other areas of the city cannot be punished because some are angry about the Inwood/Shockey sewer project.

Councilman Ellis said it still concerned him that the electric has been put in and it seems as if there is nothing to show that it complies with the code. Each unit should have been inspected. There should also be a letter of inspection from the plumbing inspector and the Department of Environmental Protection to show that all specifications have been followed. He asked if any inspection work had been done on the project.

Mayor Dean answered that one of the people who said the electric work was not installed properly produced a photograph which showed a small trench. Inside of the trench was a strip of yellow tape; it was said that this proved the electricity had not been put in at the required depth. The picture was taken to a representative of the American Electric Power Company who pointed out that the yellow tape was a warning tape that indicated that no one should dig below that. The electricity was installed at the appropriate level.

Mr. Bob Trocin, 103 Whitaker Boulevard - Executive Director of the Sanitary Board - said that inspections had been made on every single installation with personnel from the Department of Environmental Protection. Every pump was tested and he asked if there were some place not up to specifications to so advise the board. He stated he had not been told of any problems.

Councilman Bobersky, referring to the letter Mayor Dean received from the Department of Environmental Protection, said that he did not believe the DEP would approve the project unless everything was in order.

Mr. Bob LeTendre, 2095 Miller Road, said he had met with two engineers and an attorney from the Public Service Commission. Several of the electrical conduits were uncovered. The ribbon was there, but it was on top of the conduits. They measured and one was laid at a depth of 4 1/2", one at 6" and the deepest one found was 11 1/2". The BOCA Code states the depth must be 18". Mr. Vanderkraats has requested that the Public Works Director provide him with a list or documents to show that the city inspectors went up there before the holes were closed. He was told they would wait until the project was finished before it was inspected. He suggested that the engineers at the PSC be called, if there are questions.

The resolution was adopted. (6 yeas; 5 nays - Ellis, Jackson, Polan, Ritter, Patterson)

Resolution re: A RESOLUTION FOR THE REVISION OF THE FISCAL YEAR 1997-1998 GENERAL FUND BUDGET.

Councilmember Neely made a motion for adoption; seconded by Councilman Ellis.

Mayor Dean deferred to the Finance Director for explanation.

Mr. Glenn White stated that this resolution explains how the General Fund budget carryover monies are being allocated. The amount was \$497,958. The estimate was \$2,738 more than that and the appropriation must be adjusted. The overall carryover (combined with the Coal Severance fund budget) was slightly in excess of the estimate. An additional \$50,000 has been appropriated into the sale of the fixed assets revenue line; \$5,000 has been placed into the miscellaneous revenue line (received from Century Cable to cover the televising of Council meetings for six months); \$10,000 has been placed into Council's contractual category which will cover televising costs for the full year; \$1,200 has been reallocated in the City Attorney's budget to allow for the purchase of software; \$5,500 has been placed into the Personnel Office for temporary replacement for a long term secretarial coverage. In the Building Maintenance budget money has been allocated for new microphones. The final item is a decrease in the contribution to the Civic Arena. As a result, the contingency line will be increased by \$36,616 to a total of \$137,018.

Councilman Polan, referring to a memorandum from Mr. White to Mayor Dean (dated October 31, 1997), made a motion to delete items three and four, (\$5,000 from Century Cable and \$10,000 to be used for televising Council meetings) items five through eight be renumbered and a new item seven be added which would appropriate an additional \$5,000 to the Street Department for either capital outlay or contract paving; seconded by Councilman Ellis.

Councilman Bailey said he felt that the Council meetings should be televised because there are a number of people who watch the meetings, especially those who cannot come to the meetings.

Councilman Kent asked if the \$5,000, given to the city by the cable company, could be spent on something else - other than televising the meetings.

The City Attorney, Jendonnae Houdyschell, said she did not believe that money could be used for any other purpose.

Councilman Polan explained that his motion would delete the \$5,000 contribution from Century and it would be returned to the company. One half of the \$10,000 to have been allocated for televising would then go to the Street Department.

Councilman Ritter suggested postponing the resolution until the committee has met with the cable company.

Councilman Bobersky said he believed it had been said by the company that if they televise the meeting it causes a conflict of interest. He did not feel that was true.

Mr. David Harrington, Director of Administration and Finance, explained that Century's legal counsel had told him that by paying for the televising of the meetings it could be construed that they were exercising an editorial influence.

Councilmember Neely suggested waiting until after the committee meets on the 20th of November.

Councilman Polan withdrew his motion; Mr. Ellis withdrew his second.

Councilman Kent made a motion to postpone the resolution until November 24, 1997; seconded by Councilmember Neely.

The motion carried. (11 yeas; 0 nays)

Resolution re: A RESOLUTION FOR THE REVISION OF THE FISCAL YEAR 1997-1998 COAL SEVERANCE BUDGET.

Councilmember Maass made a motion to adopt; seconded by Councilmember Neely.

No vote was taken.

Councilman Kent made a motion to postpone the resolution until November 24, 1997; seconded by Councilmember Neely.

The motion carried. (11 yeas; 0 nays)

#### GOOD & WELFARE

Councilmember Maass commented that Mr. Matt Pinson, who had spoken earlier in the meeting, told Council that a box had been installed on the outside of his home with an on/off switch to turn off the power. He had said to her, earlier, that this would also disable one's security system. She asked if this could be investigated.

Chairman Patterson asked if the box would be locked.

Mayor Dean said she had no idea but that she would try and get an answer.

Chairman Patterson said his concern was that if the person were out of town and the electric was cut off it would also turn off the power to such items as a freezer.

Councilman Kent said the on/off switch is a standard feature when there is a system that runs off of electricity. This means that in cutting off the power to the house it will not impinge upon the ability of the sewer system to take waste being discharged from the house and grind it and take it away. It is not a cut-off to the house; that is still up to the American Electric Power Company. It simply means there will still be electricity to clean the garbage out of the house.

Mr. Bill Evans, 201 Green Oak Drive, asked when items no. 5 and 6 on the agenda would be returned to Council. He commended Council for voting for the bond resolution and added that a number of people do watch the televised meetings.

The Chairman explained the items were tabled indefinitely.

Councilman Polan asked Mr. Evans how much he would be willing to pay monthly in order to view the Council meetings.

Mr. Evans responded "Zilch."

Mr. Gil Vanderkraats, 547 N. Inwood Drive, said he had already requested, via the Freedom of Information Act, copies of the inspection slips. Since the project is now completed he asked if he could have those.

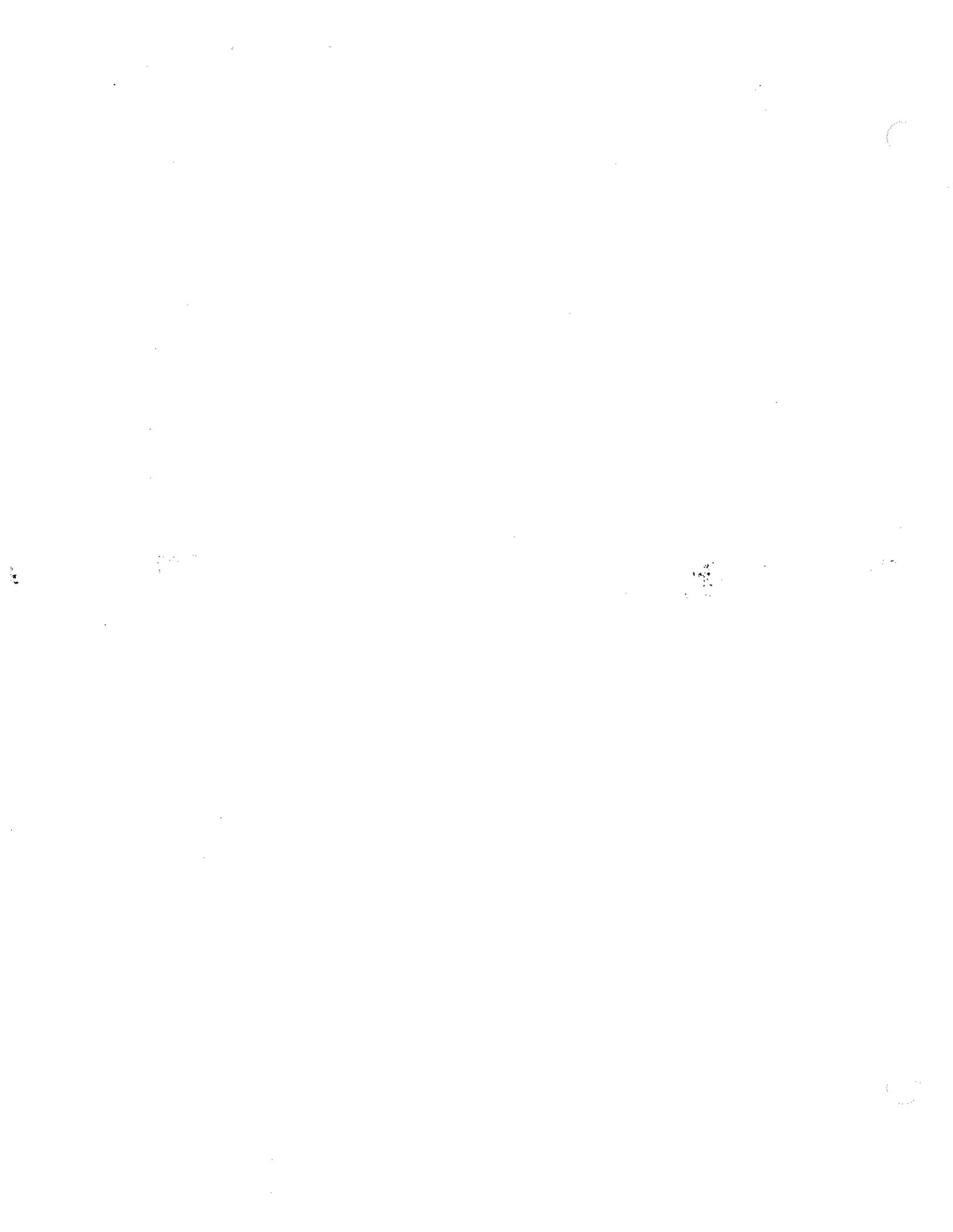
Mayor Dean replied he would have to make that request through the Freedom of Information Act.

Mr. Vanderkraats said he had already submitted that.

Mayor Dean said she had not received it.

Mr. Pete Vaughn, 1035 9th Avenue, said he was in favor of continuing the public broadcast of the Council meetings. He hoped the city would be doing what it could to bring "Mountain Stage" to Huntington. As a master electrician he has had direct experience with the resignalization of the city. Insofar as following specifications are concerned, Phase I did meet the code and Phase II did not meet the code. There were serious objections and nothing was done about it.

Hearing no other business to come before Council the Chairman adjourned the meeting at 9:50 p.m.





# STEPTOE & JOHNSON

ATTORNEYS AT LAW

BANK ONE CENTER

SIXTH FLOOR

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

November 25, 1997

The City of Huntington  
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

104 WEST CONGRESS STREET

P. O. BOX 100

CHARLES TOWN, W. VA. 25414-0100

(304) 725-1414

FACSIMILE (304) 725-1913

RILEY BUILDING, FOURTH FLOOR

14TH AND CHAPLINE STREETS

P. O. BOX 180

WHEELING, W. VA. 26003-0080

(304) 233-0000

FACSIMILE (304) 233-0014

THE RIVERS OFFICE PARK

200 STAR AVENUE, SUITE 220

P. O. BOX 828

PARKERSBURG, W. VA. 26109-0828

(304) 422-6483

FACSIMILE (304) 422-6482

WRITER'S DIRECT DIAL NUMBER

BANK ONE CENTER, SEVENTH FLOOR

P. O. BOX 1588

CHARLESTON, W. VA. 26326-1588

(304) 353-8000

FACSIMILE (304) 353-8180

1000 HAMPTON CENTER

P. O. BOX 1618

MORGANTOWN, W. VA. 26507-1618

(304) 598-8000

FACSIMILE (304) 598-8118

126 EAST BURKE STREET

P. O. BOX 2628

MARTINSBURG, W. VA. 25402-2628

(304) 263-6991

FACSIMILE (304) 263-4785

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service  
Internal Revenue Service Center  
Philadelphia, Pennsylvania 19255

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,

*Francesca Tan*

Francesca Tan

FT/jmg

Enclosures

Copy of letter with enclosure to:

Mayor Jean Dean

Samme L. Gee, Esquire

8038.LTR

435500/94001

390669.

**Part I Reporting Authority** If Amended Return, check here

1 Issuer's name <b>THE CITY OF HUNTINGTON</b>	2 Issuer's employer identification number <b>55 : 6000187</b>
3 Number and street (or P.O. box if mail is not delivered to street address) <b>800 5th Avenue</b>	4 Report number <b>G19 97 - 1</b>
5 City, town, or post office, state, and ZIP code <b>Huntington, West Virginia 25717</b>	6 Date of issue <b>11/25/97</b>
7 Name of issue <b>The City of Huntington Sewer Revenue Bonds, Series 1997 (WV SRF Program)</b>	8 CUSIP number <b>N/A</b>

**Part II Type of Issue (check applicable box(es) and enter the issue price)**

9 <input type="checkbox"/> Education (attach schedule—see instructions)	9	\$
10 <input type="checkbox"/> Health and hospital (attach schedule—see instructions)	10	
11 <input type="checkbox"/> Transportation	11	
12 <input type="checkbox"/> Public safety	12	
13 <input checked="" type="checkbox"/> Environment (including sewage bonds)	13	<b>\$3,039,895</b>
14 <input type="checkbox"/> Housing	14	
15 <input type="checkbox"/> Utilities	15	
16 <input type="checkbox"/> Other. Describe (see instructions) ▶	16	
17 If obligations are tax or other revenue anticipation bonds, check box <input type="checkbox"/>		
18 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>		

**Part III Description of Obligations**

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity.	3/1/2019	2.000 %	\$44,187.52	\$44,187.52			
20 Entire issue			\$3,039,895	\$3,039,895	11.356 years	2.005 %	1.999 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

21 Proceeds used for accrued interest				21	-0-
22 Issue price of entire issue (enter amount from line 20, column (c))				22	\$3,039,895
23 Proceeds used for bond issuance costs (including underwriters' discount)			23   \$40,000		
24 Proceeds used for credit enhancement			24   -0-		
25 Proceeds allocated to reasonably required reserve or replacement fund			25   \$177,634		
26 Proceeds used to currently refund prior issues			26   -0-		
27 Proceeds used to advance refund prior issues			27   -0-		
28 Total (add lines 23 through 27)				28	\$217,634
29 Nonrefunding proceeds of the issue (subtract line 28 from line 22 and enter amount here)				29	\$2,822,261

**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

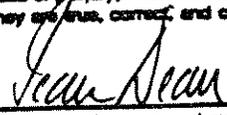
30 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶	years
31 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶	years
32 Enter the last date on which the refunded bonds will be called ▶	
33 Enter the date(s) the refunded bonds were issued ▶	

**Part VI Miscellaneous**

34 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	34	-0-
35 Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(iii) (small issuer exception)	35	-0-
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	-0-
b Enter the final maturity date of the guaranteed investment contract ▶		
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	-0-
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer ▶		
38 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>		
39 If the issuer has identified a hedge, check box <input type="checkbox"/>		

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Please Sign Here**

  
 Signature of issuer's authorized representative

11/25/97  
 Date

Jean Dean, Mayor  
 Type or print name and title



WV MUNICIPAL BOND COMMISSION

812 Quarrier Street  
Suite 300  
Charleston, WV 25301  
(304)558-3971

NEW ISSUE REPORT FORM

Date of Report: November 25, 1997

(See Reverse for Instructions)

ISSUE: The City of Huntington, Sewer Revenue Bonds, Series 1997 (WV SRF Program)

ADDRESS: 800 5th Avenue, Huntington, WV 25717

COUNTY: Cabell

PURPOSE New Money  X

OF ISSUE: Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: 11/25/97

CLOSING DATE: 11/25/97

ISSUE AMOUNT: \$3,039,895

RATE: 2% Administrative Fee: 1%

1st DEBT SERVICE DUE: 6/1/98

1st PRINCIPAL DUE: 6/1/98, \$29,209

1st DEBT SERVICE AMOUNT: \$44,408.48

PAYING AGENT: Municipal Bond Commission

ISSUERS

BOND COUNSEL: Steptoe & Johnson

Contact Person: Vincent A. Collins, Esq.

Phone: 624-8161

CLOSING BANK: Bank One

Contact Person: Daniel Mooney

Phone: 526-4200

KNOWLEDGEABLE ISSUER CONTACT

Contact Person: Robert Throcin

Position: Executive Director of Sanitary Board

Phone: 696-4437

FAX: \_\_\_\_\_

UNDERWRITERS

BOND COUNSEL: Jackson & Kelly

Contact Person: Samme L. Gee, Esq.

Phone: 340-1318

ESCROW TRUSTEE:

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

OTHER: West Virginia Division of Environmental Protection

Contact Person: Rosalie Brodersen

Function: Branch Chief

Phone: 558-0637

DEPOSITS TO MBC AT CLOSE:

By  Wire  
 Check

Accrued Interest: \$ \_\_\_\_\_

Capitalized Interest: \$ \_\_\_\_\_

Reserve Account: \$ 177,634

Other: \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:

By  Wire  
 Check  
 IGT

To Escrow Trustee: \$ \_\_\_\_\_

To Issuer: \$ \_\_\_\_\_

To Cons. Invest. Fund: \$ \_\_\_\_\_

To Other: \$ \_\_\_\_\_

NOTES:

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS

REQUIRED: \_\_\_\_\_

TRANSFERS

REQUIRED: \_\_\_\_\_

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basis facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The Commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the WV Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all suppliments, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes".

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at close are required, please submit this form before closing. If no significant facts change by closing, no resubmission at close is required. If, however, there are changes, please submit an updated form, with changes noted, at close.

If you should have any questions concerning this form, please call the Commission.



THE CITY OF HUNTINGTON

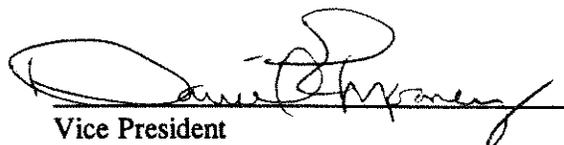
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Bank One, West Virginia, National Association, in Huntington, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of The City of Huntington (the "Issuer") enacted by the Council of the Issuer on December 11, 1995, and a Supplemental Resolution of the Issuer adopted by the Council of the Issuer on November 10, 1997 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), dated November 25, 1997, in the aggregate principal amount of \$3,039,895 (the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 25th day of November, 1997.

BANK ONE, WEST VIRGINIA,  
NATIONAL ASSOCIATION

  
Vice President

11/10/97  
435500/94001



THE CITY OF HUNTINGTON

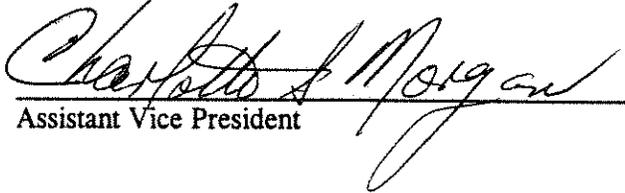
Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

ACCEPTANCE OF DUTIES AS REGISTRAR

ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association, in Charleston, West Virginia, hereby accepts appointment as Registrar in connection with The City of Huntington Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), dated November 25, 1997, in the aggregate principal amount of \$3,039,895 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 25th day of November, 1997.

ONE VALLEY BANK, NATIONAL  
ASSOCIATION

  
Assistant Vice President

10/23/97  
435500/94001



THE CITY OF HUNTINGTON

Sewer Revenue Bonds, Series 1997  
(West Virginia SRF Program)

CERTIFICATE OF REGISTRATION OF BONDS

ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association, in Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of The City of Huntington (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bond, Series 1997 (West Virginia SRF Program), of the Issuer, dated November 25, 1997, in the principal amount of \$3,039,895, numbered R-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of One Valley Bank, National Association, as Registrar.

WITNESS my signature on this 25th day of November, 1997.

ONE VALLEY BANK, NATIONAL  
ASSOCIATION

  
Assistant Vice President

10/23/97  
435500/94001



## REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 25th day of November, 1997, by and between THE CITY OF HUNTINGTON, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$3,039,895 principal amount of Sewer Revenue Bonds, Series 1997 (West Virginia SRF Program), in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted December 11, 1995, and a Supplemental Resolution of the Issuer duly adopted November 10, 1997 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

**ISSUER:** The City of Huntington  
800 Fifth Avenue  
Huntington, West Virginia 25717  
Attention: Mayor

**REGISTRAR:** One Valley Bank, National Association  
Post Office Box 1793  
One Valley Square  
Charleston, West Virginia 25326  
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

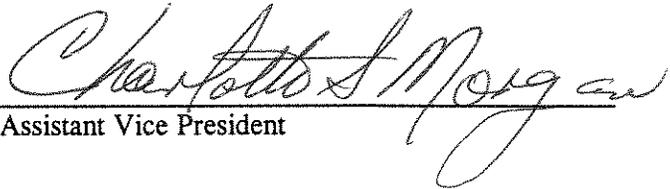
IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

THE CITY OF HUNTINGTON



\_\_\_\_\_  
Mayor

ONE VALLEY BANK, NATIONAL  
ASSOCIATION



\_\_\_\_\_  
Assistant Vice President

10/23/97  
435500/94001

**EXHIBIT A**

**Bond Legislation included in bond transcript as Documents No. 1 and No. 2**

**SCHEDULE OF COMPENSATION**



THE CITY OF HUNTINGTON, WEST VIRGINIA  
SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993

BOND ORDINANCE

Table of Contents

RECITALS 1

ARTICLE I  
DEFINITIONS; STATUTORY AUTHORITY; FINDINGS

Section 1.01 Definitions 3  
Section 1.02 Authority for this Ordinance 20  
Section 1.03 Findings 20  
Section 1.04 Ordinance Constitutes Contract 22

ARTICLE II  
AUTHORIZATION OF REFUNDING

Section 2.01 Authorization of Refunding 23

ARTICLE III  
THE BONDS

Section 3.01 Form and Payment of Bonds 24  
Section 3.02 Execution of Bonds 24  
Section 3.03 Authentication and Registration 25  
Section 3.04 Negotiability and Registration 25  
Section 3.05 Bonds Mutilated, Destroyed, Stolen or  
Lost 26  
Section 3.06 Term Bonds 27  
Section 3.07 Notice of Redemption 28  
Section 3.08 Persons Treated as Owners 30  
Section 3.09 Temporary Bonds 30  
Section 3.10 Series 1993 Bonds 31  
Section 3.11 Book Entry System for Series 1993  
Bonds 33  
Section 3.12 Delivery of Series 1993 Bonds 35  
Section 3.13 Form of Series 1993 Bonds 35  
Section 3.14 Disposition of Proceeds of Series 1993  
Bonds 36

\*Reflects supplemental and amendatory provisions set forth in  
Supplemental Resolution adopted November 3, 1993.

**ARTICLE IV**  
**SYSTEM REVENUES; FUNDS AND ACCOUNTS**

Section 4.01	Establishment of Funds and Accounts with Depository Bank	37
Section 4.02	Establishment of Funds and Accounts with Bond Commission	37
Section 4.03	System Revenues and Application Thereof	37

**ARTICLE V**  
**INVESTMENTS; NON-ARBITRAGE;**  
**REBATES OF EXCESS INVESTMENT EARNINGS**

Section 5.01	Investments	42
Section 5.02	Arbitrage	43
Section 5.03	Tax Certificate and Rebate	43

**ARTICLE VI**  
**ADDITIONAL COVENANTS OF THE ISSUER**

Section 6.01	Covenants Binding and Irrevocable	45
Section 6.02	Bonds not to be Indebtedness of the Issuer	45
Section 6.03	Bonds Secured by Pledge of Net Revenues and Moneys in Sinking Fund	45
Section 6.04	Rates	45
Section 6.05	Operation and Maintenance	46
Section 6.06	Sale of the System	46
Section 6.07	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	47
Section 6.08	Additional Parity Bonds	48
Section 6.09	Insurance and Bonds	50
Section 6.10	Services Rendered to the Board or Issuer	51
Section 6.11	Enforcement of Collections	52
Section 6.12	No Competing Franchise	52
Section 6.13	Books and Records	52
Section 6.14	Operating Budget	53
Section 6.15	Mandatory Connections	54
Section 6.16	Tax Covenants	54
Section 6.17	Covenants Regarding the Municipal Bond Insurance Policy	55

**ARTICLE VII  
DEFAULTS AND REMEDIES**

Section 7.01	Events of Default	64
Section 7.02	Enforcement	64
Section 7.03	Appointment of Receiver	65
Section 7.04	Restoration of Issuer and Bondholder	66

**ARTICLE VIII  
REGISTRAR AND PAYING AGENT**

Section 8.01	Appointment of Registrar	67
Section 8.02	Responsibilities of Registrar	67
Section 8.03	Evidence on Which Registrar May Act	67
Section 8.04	Compensation and Expenses	67
Section 8.05	Certain Permitted Acts	67
Section 8.06	Resignation of Registrar	68
Section 8.07	Removal	68
Section 8.08	Appointment of Successor	68
Section 8.09	Transfer of Rights and Property to Successor	69
Section 8.10	Merger or Consolidation	69
Section 8.11	Adoption of Authentication	69
Section 8.12	Paying Agent	69

**ARTICLE IX  
DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE**

Section 9.01	Defeasance; Discharge of Pledge of Ordinance	71
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**ARTICLE X  
MISCELLANEOUS**

Section 10.01	Amendment of Ordinance	73
Section 10.02	Evidence of Signatures of Bondholders and Ownership of Bonds	73
Section 10.03	Preservation and Inspection of Documents	74
Section 10.04	Cancellation of Bonds	74
Section 10.05	Failure to Present Bonds	74
Section 10.06	Notices, Demands and Requests	75
Section 10.07	No Personal Liability	76
Section 10.08	Law Applicable	76
Section 10.09	Parties Interested Herein	76
Section 10.10	Severability of Invalid Provisions	77
Section 10.11	Table of Contents and Headings	77
Section 10.12	Conflicting Provisions Repealed	77

Section 10.13 Procedure on Enactment of Ordinance; Public Hearing	77
SIGNATURES	78
CERTIFICATION	79
EXHIBIT A - BOND FORM	80

THE CITY OF HUNTINGTON, WEST VIRGINIA

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE CITY'S SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1987; THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$9,500,000 THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, The City of Huntington, West Virginia (the "Issuer") presently owns and operates through its sanitary board (the "Board") a municipal sewage treatment and collection system (the "System") and has heretofore financed and refinanced the acquisition and construction of the System and certain additions, extensions and improvements thereto by issuance of several series of bonds or refunding bonds, of which there are presently outstanding the Sewerage System Refunding Revenue Bonds, Series 1987, dated February 15, 1987, originally issued in the aggregate principal amount of \$8,575,000, of which \$7,130,000 is presently outstanding (the "Prior Bonds");

WHEREAS, the Prior Bonds were issued pursuant to an ordinance of the Issuer enacted by the city council of the Issuer on February 23, 1987, as amended and supplemented by a supplemental resolution adopted by the city council of the Issuer on March 9, 1987 (such ordinance, as so amended and supplemented, herein called the "Prior Ordinance");

WHEREAS, the Issuer has determined and hereby determines that it is in the best interest of the residents of The City of Huntington and the users of the System to advance refund the Prior Bonds as hereinafter set forth;

WHEREAS, under the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), the Issuer is

authorized and empowered to issue refunding revenue bonds to refund; pay or discharge all or any part of the outstanding Prior Bonds;

WHEREAS, the Issuer is advised that present value debt service savings and additional borrowing capacity will be realized as a result of the refunding of the Prior Bonds;

WHEREAS, the Issuer has determined and hereby determines that it would therefore be to the benefit of the Issuer and its residents to refund the Prior Bonds to their first redemption date, being August 1, 1997, in the manner set forth herein with proceeds of the issuance of a series of bonds to be designated "The City of Huntington Sewerage System Refunding Revenue Bonds, Series 1993" (the "Series 1993 Bonds"), in the maximum aggregate principal amount of \$9,500,000, and other moneys of the Issuer, such Series 1993 Bonds to be secured by and payable from the Net Revenues (as hereinafter defined) of the System, and containing such other terms and provisions as are hereinafter provided;

WHEREAS, the Issuer now desires to authorize the refunding of the Prior Bonds as aforesaid, and to provide for the financing thereof by the issuance of the Series 1993 Bonds as hereinafter provided;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HUNTINGTON HEREBY ORDAINS:

ARTICLE I

DEFINITIONS; STATUTORY AUTHORITY; FINDINGS

Section 1.01. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Series 1993 Bonds.

"Authorized Newspaper" means a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

"Authorized Officer" means the Mayor of the Issuer or any other officer of the Issuer specifically designated by resolution of the Council of the Issuer.

"Board" shall mean The City of Huntington Sanitary Board, or any successor thereto.

"Bond Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Bond Commission.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal Bonds, appointed by the Issuer or the Board, and shall initially mean Steptoe & Johnson, Clarksburg, West Virginia.

"Bondholder," "Holder of the Bonds," "Owner of the Bonds" or any similar term means any person who shall be the registered owner of any outstanding Bond.

"Bond Insurer" means any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds, and with respect to the Series 1993 Bonds, shall initially mean Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto.

"Bond Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

"Bond Year" means the 12 month period beginning on the anniversary of the Dated Date in each year and ending on the day prior to the anniversary date of the Dated Date in the following year.

"Bonds" means, collectively, the Series 1993 Bonds, and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 1993 Bonds, in substantially the form set forth in EXHIBIT A hereto.

"City" or "Issuer" means *The City of Huntington, a municipal corporation of the State of West Virginia, in Cabell County thereof, and, where appropriate, the Council, the Board and any successor thereto.*

"Closing Date" means the date upon which there is an exchange of the Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Connection Fees" means the fees, if any, paid by customers of the System in order to connect thereto.

"Consulting Engineers" means any qualified engineer or engineers or firm or firms of engineers that shall at any time now or hereafter be retained by the Issuer as Consulting Engineers for the System, or portion thereof.

"Costs" or similar terms means all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of refunding the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, premiums for municipal bond insurance and reserve account insurance, letter of credit fees, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental,

desirable or appurtenant to the issuance of the Bonds and the refunding of the Prior Bonds.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Council" means the City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently constituted.

"Dated Date" means November 1, 1993.

"Debt Service," with reference to a specified period, means the amount of principal, including any sinking fund payments, and interest payable with respect to the Bonds during such period.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"Depreciation Fund" means the Depreciation Fund created by Section 4.01 hereof.

"DTC-eligible" means, with respect to the Series 1993 Bonds, meeting the qualifications prescribed by the Depository Trust Company, New York, New York.

"Escrow Agreement" means the agreement to be entered into between the Issuer, the Bond Commission and the Escrow Trustee, providing for the defeasance and ultimate payment of the Prior Bonds, the deposit therein of proceeds of the Series 1993 Bonds, the disposition of moneys in the various funds and accounts under the Prior Ordinance and other matters in connection therewith, the form of which shall be approved by the Supplemental Resolution.

"Escrow Fund" means the Escrow Fund established pursuant to the Escrow Agreement.

"Escrow Trustee" means the escrow trustee under the Escrow Agreement, which shall be appointed pursuant to a resolution supplemental hereto.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Government Obligations" means direct and general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury), or obligations that are unconditionally guaranteed as to principal and interest by the United States of America, including (in the case of direct and general obligations of the United States of America) evidences of ownership of proportionate interests in future interest and principal payments of such obligations; provided that, investments in such proportionate interests shall be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying United States obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations; and (c) the underlying United States obligations are held in a special account separate from the custodian's general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments).

"Independent Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of said System in the normal operations of its business and affairs.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Bond Year.

"Mayor" means the Mayor of the Issuer.

"Municipal Bond Insurance Policy" means the municipal bond insurance policy issued by the Bond Insurer simultaneously with the

delivery of the Series 1993 Bonds, insuring the timely payment of the principal of and interest on all or any of the Series 1993 Bonds in accordance with the terms thereof.

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Accounts.

"Nonpurpose Investment" means any investment property which is acquired with the gross proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Operating Expenses," unless qualified, means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Prior Bonds or the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Ordinance" regardless of whether preceded by the article "the" or "this," means this Ordinance, as it may hereafter from time to time be amended or supplemented, *by ordinance or by resolution.*

"Original Purchaser" means Raymond James & Associates, Inc., St. Petersburg, Florida, as the purchasers of the Series 1993 Bonds directly from the Issuer, or, if the Issuer and such Original Purchaser do not agree to the purchase of the Series 1993 Bonds with interest rates and other terms allowable under the Act, such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 1993 Bonds directly from the Issuer, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the Issuer shall agree to the purchase of the Series 1993 Bonds,

as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adopted by the Council at the time of approval of such sale of said Series 1993 Bonds.

"Outstanding," when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being issued and delivered except (a) any Bond or Prior Bond canceled by the registrar for such Bond or Prior Bond at or prior to said date; (b) any Bond or Prior Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds for the purpose of consents, notices and the like, any Bond registered to the Issuer. Notwithstanding the foregoing, in the event that a Bond Insurer has paid principal of and/or interest on any Bond, such Bond shall be deemed to be Outstanding until such time as such Bond Insurer has been reimbursed in full.

"Paying Agent" means the Registrar and any other paying agent for the Bonds which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.12 hereof.

"Prior Bonds" shall have the meaning set forth in the premises hereof, and shall include the coupons appertaining thereto, if any.

"Prior Ordinance" shall have the meaning set forth in the recitals hereto.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. "Purchase Price," for

purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

"Qualified Investments" means and includes the following:

1. (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government sponsored agencies which are not backed by the full faith and credit of the United States of America:

-Federal Home Loan Mortgage Corporation  
(FHLMC)

Participation certificates  
(excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

Senior Debt obligations

- Farm Credit Banks (formerly: Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)
  - Consolidated system-wide bonds and notes
- Federal Home Loan Banks (FHL Banks)
  - Consolidated debt obligations
- Federal National Mortgage Association (FNMA)
  - Senior debt obligations
  - Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
- Student Loan Marketing Association (SLMA)
  - Senior debt obligations (excluded are securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date)
- Financing Corporation (FICO)
  - Debt obligations
- Resolution Funding Corporation (REFCORP)
  - Debt obligations

4. Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 30 days) of any bank the short-term obligations of which are rated 'A-1' or better by S&P.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$5 million.

6. Commercial paper (having original maturities of not more than 270 days) rated 'A-1+' by S&P and 'Prime-1' by Moody's.

7. Money market funds rated 'AAM' or 'AAM-G' by S&P, or better.

8. "State Obligations," which means:

A. Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated 'A3' by Moody's and 'A' by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

B. Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated 'A-1+' by S&P and 'Prime-1' by Moody's.

C. Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (A) above and rated 'AA' or better by S&P and 'Aa' or better by Moody's.

9. Pre-refunded municipal obligations rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service meeting the following requirements:

A. the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

B. the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

C. the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been

verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

D. the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

E. no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification; and

F. the cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements:

A. With any domestic bank the long term debt of which is rated 'AA' or better by S&P (so long as an opinion is rendered that the repurchase agreement is a "repurchase agreement" and a "qualified financial contract" as defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and that such bank is subject to FIRREA), or any foreign bank the long term debt of which is rated at least 'AA' by S&P and 'AAA' by S&P and at least 'Aa' by Moody's; provided the term of such repurchase agreement is for one year or less.

B. With (1) any broker-dealer with "retail customers" which has, or the parent company of which has, long-term debt rated at least 'AA' by S&P and 'Aa' by Moody's, which broker-dealer

falls under the jurisdiction of the Securities Investors Protection Corporation (SIPC); or (2) any other entity approved by Financial Security, provided that:

a. The market value of the collateral is maintained (i) for United States Treasury Securities at the levels shown below under "Collateral Levels for United States Treasury Obligations" and (ii) for other collateral, at levels acceptable to Financial Security;

b. Failure to maintain the requisite collateral percentage will require the Issuer to liquidate the collateral.

c. The Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") has possession of the collateral or the collateral has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

d. The repurchase agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the

Holder of the Collateral is in possession);

e. The transferor represents that the collateral is free and clear of any third-party liens or claims;

f. An opinion is rendered that the repurchase agreement is a "repurchase agreement" as defined in the United States Bankruptcy Code and, if the provider is a bank, that such bank is subject to FIRREA and the repurchase agreement is a "qualified financial contract" as defined in FIRREA;

g. There is or will be a written agreement governing every repurchase transaction;

h. The Issuer represents that it has no knowledge of any fraud involved in the repurchase transaction; and

i. The Issuer receives the opinion of counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such repurchase agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms.

11. Investment agreements with (A) a domestic bank the long-term debt of which is rated at least 'AA' by S&P and 'Aa' by Moody's (so long as an opinion is rendered that the bank is subject to FIRREA); or (B) a foreign bank the long-term debt of which is rated 'AAA' by S&P and at least 'Aa' by Moody's, or at least 'AA' by S&P and

'Aaa' by Moody's; provided, that, by the terms of the investment agreement:

(1) interest payments are to be made at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice (which notice may be amended or withdrawn at any time prior to the specified withdrawal date); provided that the Ordinance specifically requires the Issuer to give notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(3) the investment agreement shall state that is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof;

(4) a fixed guaranteed rate of interest is to be paid on invested funds and all future deposits, if any, required to be made to restore the amount of such funds to the level specified under the Ordinance;

(5) the term of the investment agreement does not exceed seven years or such longer term as shall be approved by the Bond Insurer;

(6) the Issuer receives the opinion of domestic counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in form and substance acceptable;

(7) the investment agreement shall provide that if during its term

(a) the provider's rating by either S&P or Moody's falls below 'AA'

or 'Aa,' respectively, or, with respect to a foreign bank, below the ratings of such provider at the delivery date of the investment agreement, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, either (i) collateralize the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") United States Treasury Obligations which are free and clear of any third-party liens or claims at the Collateral Levels set forth below; or (ii) repay the principal of and accrued but unpaid interest on the investment, and

(b) the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below 'A,' or, with respect to a foreign bank, below "AA" or "Aa" by S&P or Moody's, as appropriate, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Issuer; and

(8) The investment agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(9) the investment agreement must provide that if during its term

(a) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate, and

(b) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate.

12. Any State-administered pool investment fund in which the Issuer is statutorily permitted or required to invest.

13. Subject to the prior written approval of the Bond Insurer, such other obligations as shall be permitted to be legal investments of the Issuer by the laws of the State.

COLLATERAL LEVELS FOR UNITED STATES TREASURY OBLIGATIONS

Frequency of valuation	Remaining maturity				
	<u>1 year or less</u>	<u>5 years or less</u>	<u>10 years or less</u>	<u>15 years or less</u>	<u>30 years or less</u>
Daily	102	105	106	108	114
Weekly	103	111	112	114	120
Monthly	105	117	120	125	133
Quarterly	107	120	130	133	140

VALUATION REQUIREMENTS:

- (1) On each valuation date the Issuer, the Paying Agent, or the custodian who shall confirm to the Issuer and the Paying Agent, shall, at the cost of the provider, value the market value (exclusive of accrued interest) of the collateral, which market value will be an amount equal to the requisite collateral percentage times the principal amount of the investment and unpaid accrued interest thereon that is being secured;
- (2) In the event the collateral level is below its collateral percentage on a valuation date, such percentage shall be restored within the following restoration periods: one business day for daily valuations, two business days for weekly and monthly valuations, and one month for quarterly valuations. [The use of different restoration periods affect the requisite collateral percentage.];
- (3) The Issuer shall terminate the repurchase agreement or investment agreement, as appropriate, upon a failure to maintain the requisite collateral percentage after the restoration period and, if not paid by the counterparty in federal funds against transfer of the collateral, liquidate the collateral.

(f) The prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Reserve Account.

"Record Date" means the day of the month which shall be so stated in the Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Recording Officer," "Recorder" or "Clerk" means the City Clerk of the Issuer.

"Redemption Account" means the Redemption Account created in the Sinking Fund by Section 4.02 hereof.

"Redemption Date" means the date fixed for redemption of Bonds subject to redemption in any notice of redemption published or mailed in accordance herewith.

"Redemption Price" means the price at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Reserve Account" means the Reserve Account created in the Sinking Fund by Section 4.02 hereof.

"Reserve Account Requirement" means, as of any date of calculation, the maximum amount of Debt Service that will come due on the Bonds in the then current or any succeeding Bond Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

"Revenue Fund" means the Revenue Fund created by Section 4.01 hereof.

"Series 1993 Bonds" means the Sewerage System Refunding Revenue Bonds, Series 1993, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Sinking Fund" means the Sinking Fund created by Section 4.02 hereof.

"Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the Issuer following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other

terms of the Series 1993 Bonds and authorizing the sale of the Series 1993 Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the City, consisting of a sewage treatment plant, collection and transportation lines, lift stations, pumps and all appurtenant facilities, now owned by the Issuer or any integral part thereof, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a municipal sewage treatment and collection system, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for said sewage treatment and collection system from any sources whatsoever, both within and without the Issuer.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption, as described by Section 3.06 hereof.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

Section 1.02. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The Issuer is a municipal corporation of the State of West Virginia, in Cabell County of said State.

B. The Issuer now owns and operates, through the Board, the System, the acquisition and construction of which has been financed and refinanced in part by the proceeds of the Prior Bonds which are currently outstanding in the aggregate principal amount of \$7,130,000 and other bonds which have either been refunded and defeased by the Prior Bonds or are no longer Outstanding.

C. The Issuer derives revenues from the System which are pledged for payment of the Prior Bonds. Except for such pledge thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

D. The Issuer intends to issue the Series 1993 Bonds and to pledge for payment thereof, the Net Revenues of the System.

E. The estimated revenues to be derived in each year after the date hereof from the operation of the System will be sufficient, upon refunding and defeasance of the Prior Bonds, to provide for the repair, maintenance and operation of the System, the payment of interest upon all bonds issued pursuant to the Act and to create a sinking fund, as hereinafter provided, to pay the principal thereof as and when it becomes due and reasonable reserves therefor, to provide an adequate depreciation fund, as hereinafter provided, and to make all other payments provided for in this Ordinance.

F. Based upon the assumed principal amount, maturity schedule and interest rates for the Series 1993 Bonds presented to the Issuer by the Original Purchaser, and after making allowance for the use of cash on hand of the Issuer, the Series 1993 Bonds show a net present value debt service savings to the Issuer after deducting all expenses of the refunding and the costs of issuing the Series 1993 Bonds.

G. It is in the best interest of the Issuer, and the inhabitants thereof, that the Issuer issue the Series 1993 Bonds and secure the Series 1993 Bonds by a pledge and assignment of the Net Revenues derived from the operation of the System, the moneys in the Reserve Account, unexpended proceeds of the Series 1993 Bonds and as further set forth herein.

H. The Series 1993 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

I. All things necessary to make the Series 1993 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 1993 Bonds, will be timely done and duly performed.

J. The enactment of this Ordinance, and the execution and issuance of the Series 1993 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

Section 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal Holders of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II

AUTHORIZATION OF REFUNDING

Section 2.01. Authorization of Refunding. All Prior Bonds Outstanding as of the date of issuance of the Series 1993 Bonds in the aggregate principal amount of \$7,130,000 are hereby ordered to be refunded pursuant to the terms of the Escrow Agreement, and the pledge of Net Revenues in favor of the Holders of such refunded Prior Bonds imposed by the Prior Ordinance, the moneys in the funds and accounts created by the Prior Ordinance and any other funds pledged by the Prior Ordinance thereto are hereby ordered terminated, discharged and released upon the payment into the Escrow Fund from the proceeds of the Series 1993 Bonds, together with other moneys available therefor, of the following: (a) if required by the Escrow Agreement, an amount equal to the fiscal and paying agent charges and the Escrow Trustee charges to become due and payable in connection with the Prior Bonds and (b) an amount which will be simultaneously invested in Government Obligations bearing interest and having maturities sufficient, together with certain cash which may also be deposited, to provide for the payment of the principal of and interest on such Prior Bonds as the same become due, to the respective serial maturity dates thereof, but in no event beyond the first date upon which the entire aggregate amount of the Prior Bonds shall be redeemed, being August 1, 1997, all as set forth in the Escrow Agreement. Contemporaneously with the deposit of such Series 1993 Bond proceeds into the Escrow Fund, the amounts on deposit in the sinking fund, including the reserve account therein, and all other funds and accounts created and maintained on behalf of the Prior Bonds shall be deposited in the Escrow Fund, the Reserve Account or such other fund or account as shall be set forth in the Escrow Agreement, and invested as provided in the Escrow Agreement and this Ordinance.

## ARTICLE III

### THE BONDS

Section 3.01. Form and Payment of Bonds. No Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Bonds issued pursuant to this Ordinance after the issuance of the Series 1993 Bonds, as hereinafter provided, may be issued only as fully registered Bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity. All Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Bonds surrendered.

The principal of and the premium, if any, on the Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Registered Owner of \$1,000,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Registered Owner.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the Issuer shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, by his or her manual or facsimile signature, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be

such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A attached hereto and incorporated herein by reference with respect to the Series 1993 Bonds, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the

transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing the Issuer and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If such Bond shall have matured or be about to mature, instead of issuing

a substitute Bond, the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Term Bonds. In the event Term Bonds are issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the Issuer from the Revenue Fund and into the Redemption Account in accordance with Subsection 4.03(A)(2) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory redemption date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory redemption date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory redemption date, the Issuer may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The Issuer shall on or before the 60th day next preceding each mandatory redemption date furnish the Registrar and the Bond Commission with its certificate indicating whether and to what

extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Bond Commission may use the moneys in the Redemption Account to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond Commission shall advise the Issuer and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the Issuer on such mandatory redemption date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the Issuer, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the redemption date (interest to be paid from the Sinking Fund), as will exhaust as nearly as practicable such Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory redemption date, in such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of \$5,000.

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the applicable Bond Insurer, the Original Purchaser, and the registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state:

- (1) The redemption date,
- (2) The redemption price,

(3) If less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the redemption date the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Registrar, and

(6) Such other information, if any, as shall be required for DTC-Eligible Bonds.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Bonds, and failure to mail such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

In addition to the foregoing notice, further notice as set out below shall be given by the Registrar, at the instruction of the Issuer, but no defect in said further notice nor any failure to give

all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(1) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each bond being redeemed; (iv) the maturity date of each bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed.

(2) Each further notice of redemption shall be sent at least 35 days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds (such depositories now being Depository Trust Company of New York, New York, Midwest Securities Trust Company of Chicago, Illinois, Pacific Securities Depository Trust Company of San Francisco, California and Philadelphia Depository Trust Company of Philadelphia, Pennsylvania).

(3) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Section 3.08. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of, and interest on, such Bond and (except as provided in Section 6.18) for all other purposes, whether or not such Bond is overdue.

Section 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the Issuer may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this

Ordinance. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Series 1993 Bonds. For the purposes of refunding all of the Outstanding Prior Bonds of the Issuer, funding the Reserve Account and paying costs in connection therewith, there shall be issued the Series 1993 Bonds of the Issuer, in an aggregate principal amount of \$7,100,000. Said Series 1993 Bonds shall be designated "Sewerage System Refunding Revenue Bonds, Series 1993" and shall be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof for any year of maturity, not exceeding the aggregate principal amount of Series 1993 Bonds maturing in the year of maturity for which the denomination is to be specified. The Series 1993 Bonds shall be numbered from R-1 consecutively upward. The Series 1993 Bonds shall be dated November 1, 1993, upon original issuance, shall bear interest payable semiannually on May 1 and November 1 of each year, commencing May 1, 1994, and shall mature on November 1 in years as follows:

<u>Year</u> <u>(Nov. 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
1994	\$ 360,000	2.700%	100%
1995	360,000	3.100	100
1996	75,000	3.300	100
1997	75,000	3.600	100
1998	80,000	3.800	100
1999	80,000	4.000	100
2000	90,000	4.100	100
2001	90,000	4.200	100
2002	100,000	4.300	99.630
2003	100,000	4.400	99.202
2004	105,000	4.600	99.572
2005	105,000	4.700	99.096
2006	110,000	4.875	99.286
2007	115,000	5.000	99.007
2018	2,520,000	5.250	97.286
2023	<u>2,735,000</u>	5.375	97.500
<b>TOTAL</b>	<u><b>\$7,100,000</b></u>		

The Series 1993 Bonds shall not be subject to optional redemption prior to November 1, 2003. The Series 1993 Bonds maturing

on or after November 1, 2004, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after November 1, 2003, in whole at any time or in part on any interest payment date, in such order of maturity as may be determined by the Issuer and by lot within a maturity, at the respective redemption prices (expressed as percentages of the principal amounts to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

<u>Period During Which Redeemed</u>	<u>Redemption Price</u>
November 1, 2003 to October 31, 2004	102%
November 1, 2004 to October 31, 2005	101
November 1, 2005 and thereafter	100

The Series 1993 Bonds maturing November 1, 2018 and 2023 (the "Term Bonds") shall be subject to mandatory sinking fund redemption prior to maturity in part by random selection as may be determined by the Registrar, on November 1 of the years and in accordance with the following mandatory redemption schedule, at a redemption price equal to the principal amount thereof, plus interest accrued to the date fixed for redemption, without premium:

SERIES 1993 BONDS MATURING NOVEMBER 1, 2018

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
2008	\$125,000
2009	130,000
2010	140,000
2011	140,000
2012	150,000
2013	160,000
2014	170,000
2015	175,000
2016	420,000
2017	445,000
2018	465,000 *

\* By maturity

SERIES 1993 BONDS MATURING NOVEMBER 1, 2023

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
2019	\$490,000
2020	520,000
2021	545,000
2022	575,000
2023	605,000 *

\* By maturity

If a Series 1993 Bond is called for redemption in part, the Series 1993 Bond shall be renumbered and exchanged for a Series 1993 Bond of the amount then outstanding, without charge to the Bondholder.

Section 3.11. Book Entry System for Series 1993 Bonds.

A. The Series 1993 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 1993 Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Series 1993 Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the Series 1993 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Series 1993 Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a Series 1993 Bond or any other evidence of ownership of the Series 1993 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Series 1993 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Series 1993 Bonds, the Issuer and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Series 1993 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption Price of or interest on such Series 1993 Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Bondholder under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Registrar with respect to the principal or Redemption Price of or interest on the Series 1993 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Series 1993 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Series 1993 Bonds so redeemed, but DTC may return such Series 1993 Bonds and make an appropriate notation on the Series 1993 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Series 1993 Bonds of such maturity which have been redeemed.

D. The Issuer, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Series 1993 Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Series 1993 Bonds, selecting the Series 1993 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of Series 1993 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Series 1993 Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder with respect to (i) the Series 1993 Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Series 1993 Bonds, (iv) any notice which is permitted or required to be given to Bondholders under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Series 1993 Bonds or (vi) any consent given or other action taken by DTC as Bondholder.

E. The book entry system for registration of the ownership of the Series 1993 Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Series 1993 Bonds; or (ii) the Issuer determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Series 1993 Bonds. In either of such events (unless in the case described in clause (ii) above, the Issuer appoints a successor securities depository), the Series 1993 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Series 1993 Bonds.

Section 3.12. Delivery of Series 1993 Bonds. The Issuer shall execute and deliver the Series 1993 Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 1993 Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) A list of the names in which the Series 1993 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1993 Bonds to the Original Purchaser;

(C) Copies, certified by the Clerk of this Ordinance and the Supplemental Resolution; and

(D) The unqualified approving opinion upon the Series 1993 Bonds by Bond Counsel.

Section 3.13. Form of Series 1993 Bonds. The definitive Series 1993 Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 1993 Bonds on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval,

and the definitive Series 1993 Bonds shall have the form of the opinion of Steptoe & Johnson, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Series 1993 Bonds.

Upon the issuance and delivery of the Series 1993 Bonds, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 1993 Bonds from the date thereof to the date of delivery thereof shall be deposited in the Sinking Fund and applied to payment of interest on the Series 1993 Bonds at the first interest payment date.

B. The amount of the Series 1993 Bond proceeds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Prior Bonds (which amount shall be set forth in the Escrow Agreement) shall be deposited in the Escrow Fund.

C. The amount of Series 1993 Bond Proceeds equal to the Reserve Account Requirement shall be remitted to the Bond Commission for deposit in the Reserve Account, provided that, to the extent the Reserve Account Requirement is satisfied in whole or in part from proceeds of any fund or account established pursuant to the Prior Ordinance, Series 1993 Bond Proceeds shall be deposited in the Reserve Account only to the extent needed to satisfy the balance of the Reserve Account Requirement.

D. The balance of the proceeds of the Series 1993 Bonds shall be deposited with the Depository Bank in the Series 1993 Bonds Costs of Issuance Fund and shall be drawn out, used and applied by the Issuer solely to pay costs of issuance of the Series 1993 Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the Issuer. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose, such unapplied proceeds shall be transferred by the Issuer to the Series 1993 Bonds Redemption Account established in Section 4.01 hereof. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Holders of the Series 1993 Bonds from which such proceeds are derived.

ARTICLE IV

SYSTEM REVENUES; FUNDS AND ACCOUNTS

Section 4.01. Establishment of Funds and Accounts with Depository Bank. Pursuant to this Article IV, the following special funds are created with, and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other, (except as set forth in this Section 4.01) and used solely for the purposes provided herein:

- (1) Revenue Fund;
- (2) Depreciation Fund;
- (3) Costs of Issuance Fund; and
- (4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. Pursuant to this Article IV, the following special fund and accounts are hereby established with and shall be held by the Bond Commission:

- (1) Sinking Fund;
  - (a) Within the Sinking Fund:
    - (i) Reserve Account; and
    - (ii) Redemption Account.

Section 4.03. System Revenues and Application Thereof. So long as any of the Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, beginning on the first day of that month which is 6 months prior to the first interest payment date on the Series 1993 Bonds, apportion and set apart out of the Revenue Fund and remit to the Bond Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Bonds on the next ensuing semiannual interest payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date, and provided further, that the initial amount required to be transferred from the Revenue Fund and deposited in the Sinking Fund shall be reduced by the amount of accrued interest on the Series 1993 Bonds deposited therein and subsequent amounts required to be transferred from the Revenue Fund and deposited in the Sinking Fund shall be reduced by the amount of any earnings credited to the Sinking Fund.

The Issuer shall also apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Sinking Fund, and in the Redemption Account therein in the case of Term Bonds which are to be redeemed, on the first day of each month, beginning on the first day of that month which is 12 months prior to the first principal payment or mandatory redemption date of the Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Bonds on the next ensuing principal payment or mandatory redemption date, provided, that in the event the period to elapse between the date of such initial deposit in the Sinking Fund and the next ensuing principal payment or mandatory redemption date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, one month prior to the next ensuing principal payment date or mandatory redemption date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Sinking Fund and not previously credited pursuant to the preceding paragraph.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as

the same shall become due, whether by maturity or redemption prior to maturity. Pending such use, such moneys shall be invested in accordance with Article V.

The Issuer shall not be required to make any further payments into the Sinking Fund when the aggregate amount of funds in the Sinking Fund, including the Reserve Account therein, is at least equal to the aggregate principal amount of Bonds issued pursuant to this Ordinance then Outstanding, plus the amount of interest due or thereafter to become due on the Bonds then Outstanding.

As and when additional Bonds ranking on a parity with the Series 1993 Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at or before maturity in accordance with the provisions hereof.

The payments into the Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

The Issuer shall restore any withdrawals from the Reserve Account which have the effect of reducing the assets therein below the Reserve Account Requirement, first, from the Depreciation Fund, and then from the first Net Revenues available after all other required payments to the Sinking Fund, including any deficiencies for prior payments, have been made in full; provided, that the Issuer shall not be required to restore such deficiency when the aggregate amount of funds in the Sinking Fund, including the Reserve Account therein, is at least equal to the aggregate amount of Bonds issued pursuant to this Ordinance then Outstanding, plus the amount of interest due or thereafter to become due on said Bonds then Outstanding.

(3) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, each month, apply such moneys, to the full extent necessary, for deposit into the Reserve Account, as a result of a decrease in value of the Reserve Account below the Reserve Account Requirement or any withdrawal from the Reserve Account, beginning with the

first full calendar month following the date on which (i) the valuation of investments in the Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Reserve Account is less than the Reserve Account Requirement, or (ii) any amount is withdrawn from the Reserve Account for deposit into the Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Reserve Account to an amount equal to the Reserve Account Requirement to the full extent that such Net Revenues are available; provided, that no payments shall be required to be made into the Reserve Account whenever and as long as the amount deposited therein shall be equal to the Reserve Account Requirement.

Amounts in the Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Bonds when due, when amounts in the Sinking Fund are insufficient therefor and for no other purpose.

(4) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month commencing with the first month in which interest shall be payable from the Revenue Fund, transfer to the Depreciation Fund a sum equal to not less than 2 1/2% of the Gross Revenues each month, exclusive of any payments for the account of the Reserve Account in the Sinking Fund.

Withdrawals and disbursements may be made by the Issuer from the Depreciation Fund only for the following purposes and in the following order of priority:

(a) To make up any deficiency in the Reserve Account (so that the amount on deposit therein is at least equal to the Reserve Account Requirement), or to reimburse in whole or in part any issuer of a Reserve Account Letter of Credit in the event of a draw thereon;

(b) For the payment of the principal (including the principal amount to be paid under the mandatory redemption schedules) of or interest on the Bonds, but only in the event that at the time of such withdrawal there are not sufficient funds for such purpose in the Sinking Fund (excluding the Reserve Account);

(c) For the payment of the reasonable costs of land and depreciable renewals, repairs, extensions, improvements and additions to the System;

(d) Upon resolution of the Board and the Issuer, moneys in the Depreciation Fund in excess of \$1,000,000 may be transferred by the Issuer to the Redemption Account and used for optional redemption or for purchase of Bonds. In the event of purchase of Bonds, the Issuer may direct the purchase of Bonds offered for sale at the lowest price below the redemption price of such Bonds.

(5) The Issuer may next, each month, after making the above required transfers of moneys from the Revenue Fund, apply any remaining Net Revenues to payment of debt service on subordinate bonds, notes, certificates or obligations of the System. Any excess of moneys then remaining in the Revenue Fund may be used for any lawful purpose of the System.

(6) If on any monthly payment date the Revenues of the System are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuring payment dates.

B. The Bond Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Bond Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The moneys on deposit in the Revenue Fund and the Depreciation Fund in excess of the sum insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of municipal funds under the laws of the State.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE;  
REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The Issuer shall, or shall cause the Bond Commission to semiannually transfer from the Reserve Account to the Sinking Fund any earnings on the moneys deposited therein and any other funds in excess of the Reserve Account Requirement; provided, however, that there shall at all times remain on deposit in the Reserve Account an amount at least equal to the Reserve Account Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually,

except in the event of a withdrawal from the Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Reserve Account shall, at any time, be less than the applicable Reserve Requirement, the applicable Bond Insurer shall be notified immediately of such deficiency, and such deficiency shall be made up from the first available Net Revenues after required deposits to the Sinking Fund and otherwise in accordance with Section 4.03(3).

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds of each series in such manner and to such extent as may be necessary, so that such Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to such Bonds) so that the interest on such Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate and Rebate. A. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of any series of Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1993 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

B. The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, the Note, or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Net Revenues of the System, the moneys in the Sinking Fund and all accounts therein, the unexpended proceeds of the Bonds or moneys in a construction fund, if any, all as herein provided. No Holder or Holders of any Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues and Moneys in Sinking Fund. The payment of the debt service of all of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System and all moneys and securities in the Sinking Fund, including the Reserve Account therein, to the extent necessary to make the payments required under Section 4.03. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the Sinking Fund, all moneys and securities in the Sinking Fund, including the Reserve Account therein, and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and interest on the Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Prior to the issuance of the Series 1993 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges

so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than the sum of (i) 120% of the Maximum Annual Debt Service on the Bonds in any Fiscal Year; and (ii) the amount, if any, required to be deposited in the Reserve Account in order to satisfy the Reserve Account Requirement within a period of not more than 12 months, assuming equal payments are made each month. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Revenues of said System in the manner provided in this Ordinance.

Section 6.06. Sale of the System. The System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to defease the pledge created by this Ordinance as provided by Section 9.01. The proceeds from such sale, mortgage, lease or other disposition of the System shall be immediately remitted to Bond Commission for deposit in the Sinking Fund, and otherwise as prescribed by Section 9.01. Any balance remaining after such

defeasance shall be remitted to the Issuer by the Bond Commission unless necessary for the payment of other obligations of the Issuer payable out of the Revenues of the System.

The foregoing provision notwithstanding, the Board shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Board shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Board may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Board shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Council may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Depreciation Fund. Such payments of such proceeds into the Depreciation Fund or the Redemption Account shall reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$200,000 and insufficient to defease the pledge created by this Ordinance, as provided by Section 9.01, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of 60% in amount of Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except additional parity Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from the Net Revenues with the

Bonds; and all obligations hereafter issued by the Issuer payable from the Revenues of the System, except such additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such Revenues and in all other respects to the Bonds.

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to such additional parity Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and Revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. No additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the increased annual Net Revenues expected to be received after the date of issuance of such parity Bonds shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Series 1993 Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "increased annual Net Revenues expected to be received" as that term is used in the computation provided in the above

paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such additional parity Bonds, and the increased Net Revenues to be available as a result of existing additional customers required by law to be served by the System upon completion of the facilities to be financed with the proceeds of any such additional parity Bonds, and shall not exceed the amount to be stated in the aforementioned certificate of Independent Accountants, which shall be filed in the office of the Clerk of the Issuer prior to the issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 1993 Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1993 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

No additional parity Bonds shall be valid unless authenticated pursuant to Section 3.03. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by Section 3.12 with respect to the Series 1993 Bonds, modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made pursuant to Section 4.03(1), (2), (3) and (4) have first been paid. The Issuer shall not issue any

obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Bonds except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding (excluding the Depreciation Fund), and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The Issuer may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Bonds remain Outstanding, the Issuer or the Board will, as an Operating Expense, procure, carry and maintain insurance and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the event of any damage to or destruction of any portion of the System, the Board will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damages or destroyed portion. The Board will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Board and the Issuer during construction of the Project in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than is customarily carried by municipalities of equivalent size with respect to works and properties similar to the System to protect the Issuer and the Board from claims for bodily injury and/or death and from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer and the Board from claims arising out of operation or

ownership of motor vehicles of or for the System, provided that, the Board, with the review of an insurance consultant and the concurrence of the Issuer, may elect to self-insure. If the Issuer determines in good faith that any required insurance is not commercially available at a reasonable cost with reasonable terms, it shall engage an insurance consultant to verify the determination and to make recommendations regarding the types, amounts and provisions of any such insurance that should be purchased or funded by the Issuer, taking into consideration the costs and practices of other municipal water and sewer systems of similar size and type in the State to the extent that such information is available. The Issuer may, upon resolution adopted in good faith and upon the recommendations of the insurance consultant, adopt alternate or supplemental risk management programs which the Issuer determines to be reasonable, including the right to self-insure and participate in captive insurance companies.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Board and such payment bonds will be filed with the Clerk of the County Commission of Cabell County prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided as to every officer and employee of the Board having custody of the Revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 6.10. Services Rendered to the Board or Issuer. The Board will not render or cause to be rendered any free services of any nature by its System; and, in the event the Board, the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Board, the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Board or the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to

any of its departments or properties. The revenues so received shall be deemed to be Revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other Revenues derived from such operation of the System.

Section 6.11. Enforcement of Collections. The Issuer or the Board will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other changes, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and any services and facilities of the City's waterworks system, to all delinquent users of services and facilities of the System and will not restore such services of the System (or waterworks system) until all billing for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, has been fully paid.

Section 6.12. No Competing Franchise. To the extent legally allowable, neither the Issuer nor the Board will grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Books and Records. The Board will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Board or the City, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the System, and all parts

thereof, and all records, accounts and data of the Board relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Board. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records as prescribed by the Board. The Board shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Board shall be reported to such agent of the Board as it shall direct.

The Issuer or the Board shall file with the Original Purchaser and any Bond Insurer, and shall mail to any Bondholder requesting the same, an annual report within 30 days following the date of receipt of the final audit containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The Issuer or the Board shall also file with the Original Purchaser and any Bond Insurer, and mail to any Bondholder requesting the same, a monthly unaudited report within 30 days following the end of each month containing the following:

(A) A statement of Gross Revenues, Operating Expenses, and Net Revenues derived from the System.

(B) A statement of account balances in the Sinking Fund accounts provided for in this Ordinance and status of said funds.

The Issuer or the Board shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.14. Operating Budget. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date required by the charter of the Issuer, prepare and adopt by resolution a detailed budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No increased expenditures in excess of 10% of the amount

of such budget shall be made except upon the further certificate of such a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Board shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Original Purchaser and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Original Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.15. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the City, and in order to assure the rendering harmless of sewage and waterborne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building and every such owner, tenant or occupant shall, after a 30 day notice of the availability of sewerage services of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or waterborne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the residents of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 6.16. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the

Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.17. Covenants Regarding the Municipal Bond Insurance Policy. The Issuer has obtained a Municipal Bond Insurance Policy for the Series 1993 Bonds. As a condition to issuance of such Municipal Bond Insurance Policy, certain additional covenants of the Issuer are required by the Bond Insurer as a condition to insuring the

Series 1993 Bonds. These additional covenants are set forth in full in the Supplemental Resolution, shall apply to the Series 1993 Bonds and any other Bonds which may be insured by such Bond Insurer, and shall be controlling in the event any other provisions of this Ordinance may be in conflict therewith. Such additional covenants are also set forth in full in this conformed copy of the Ordinance as follows:

(a) In the event the maturity of the Series 1993 Bonds is accelerated, the Bond Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued or accreted, as applicable, on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Bond Insurer's obligations under the Policy shall be fully discharged.

(b) The Bond Insurer shall be deemed to be the sole holder of the Series 1993 Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Series 1993 Bonds insured by it are entitled to take pursuant to Article VII of the Ordinance (pertaining to defaults and remedies).

(c) Copies of any modification or amendment to the Ordinance shall be sent to Standard & Poor's Corporation and Moody's Investors Service, Inc. at least 15 days prior to the effective date thereof.

(d) Rights of the Bond Insurer to direct or consent to Issuer or Bondholder actions under the Ordinance shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Policy is no longer in effect or the Bond Insurer asserts that the Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.

(e) In determining whether a payment default has occurred, no effect shall be given to payments made under the Policy.

(f) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Series 1993 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Policy.

(g) The Bond Insurer shall have the right to advance any payment required to be made by the Issuer in order to prevent an event of default under this Ordinance and the Paying Agent shall be required to accept such advance. The Issuer shall be required to reimburse the Bond Insurer for any such advance.

(h) The rights granted to the Bond Insurer under the Ordinance to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Bondholders nor does such action evidence any position of the Bond Insurer, positive or negative, as to whether Bondholders consent is required in addition to consent of the Bond Insurer.

(i) Only (1) cash, (2) non-callable direct obligations of the United States of America, or (3) pre-refunded municipal obligation rated "AAA" and "Aaa" by S&P and Moody's, respectively (or any combination thereof) shall be authorized to be used to effect defeasance of the Series 1993 Bonds unless the Bond Insurer otherwise approves. Such obligations shall constitute "Defeasance Obligations." In the event of an advance refunding (i) the Issuer shall cause to be delivered, on the deposit date and upon any reinvestment of the defeasance amount, a report of an independent firm of nationally recognized certified public accountants "(Accountant)" verifying the sufficiency of the escrow established to pay the Series 1993 Bonds in full on the maturity date or earlier redemption thereof ("Verification"), (ii) the escrow agreement shall provide that no (A) substitution of a Defeasance Obligation shall be permitted except with another Defeasance Obligation and upon delivery of a new Verification and (B) reinvestment of a Defeasance Obligation shall be permitted except as contemplated by the original Verification or upon delivery of a new Verification, and (iii) there shall be delivered an opinion of nationally recognized bond counsel to the effect that the Series 1993 Bonds are no longer "Outstanding" under the Ordinance; each Verification and defeasance opinion shall be addressed to the Issuer, the Paying Agent and the

Bond Insurer. Series 1993 Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria is met.

(j) Amounts paid by the Bond Insurer under the Policy shall not be deemed paid for purposes of the Ordinance and shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full.

(k) The notice address of the Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director - Surveillance.

(l) The Bond Insurer shall be included as a third party beneficiary to the Ordinance.

(m) The Bond Insurer shall be provided with the following information:

(i) upon delivery of the annual audited financial statements of the Issuer, a certificate of the chief financial officer of the Issuer stating that, to the best of such individual's knowledge following reasonable inquiry, no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) has occurred, or if an Event of Default has occurred, specifying the nature thereof and, if the Issuer has a right to cure pursuant to Section 7.04 of the Ordinance, stating in reasonable detail the steps, if any, being taken by the Issuer to cure such Event of Default;

(ii) Official Statement, if any, prepared in connection with the issuance of additional bonds within 30 days after the bond sale;

(iii) Notice of any draw upon, or deficiency due to market fluctuation in the amount on deposit in, the Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Account Requirement and (ii) withdrawals

in connection with a refunding of the Series 1993 Bonds;

(iv) Notice of the redemption of any of the Series 1993 Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(v) Notice of the resignation or removal of the Paying Agent and the appointment of, and acceptance of duties by, any successor thereto;

(vi) A full original transcript of all proceedings relating to the execution of any amendment or supplement to the Ordinance; and

(vii) Such additional information as the Bond Insurer from time to time may reasonably request.

(n) Claims Upon the Policy and Payments by and to the Bond Insurer.

(A) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date or the date to which Bond maturity has been accelerated ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under this Ordinance, moneys sufficient to pay the principal of and interest on the Series 1993 Bonds due on such Payment Date, the Paying Agent shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent" by telephone or teletype of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Series 1993 Bonds due on such Payment Date, the Paying Agent shall make a claim under the Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Series 1993 Bonds and the amount required to pay principal of the Series 1993 Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day.

(B) All amounts paid by the Bond Insurer pursuant to (A) above, shall be deposited by the Paying Agent in a special fund hereby established and designated the "Policy Payments Account." Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Bond Insurer.

(C) The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon one Business Day's prior notice to the Paying Agent.

(D) Subject to and conditioned upon payment of any interest or principal with respect to the Series 1993 Bonds by or on behalf of the Bond Insurer, each Bondholder, by its purchase of Series 1993 Bonds, hereby assigns to the Bond Insurer, but only to the extent of all payments made by the Bond Insurer, all rights to the payment of interest or principal on the Series 1993 Bonds, including, without limitation, any amounts due to the Bondholders in respect of securities law violations arising from the offer and sale of the Series 1993 Bonds, which are then due for payment. The Bond Insurer may exercise any option, vote, right, power or the like with respect to Series 1993 Bonds to the extent it has made a principal payment pursuant to the Policy. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to the Bond Insurer in respect of such payments. The Paying Agent shall take such action and deliver such instruments as may be reasonably requested or required by the Bond Insurer to effectuate the purpose or provisions of this clause (E).

(E) The Paying Agent shall promptly notify the Bond Insurer of either of the following as to which it has actual knowledge: (i) the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") and (ii) the making of any claim in connection with any insolvency proceeding seeking the avoidance as a preferential transfer (a "Preference Claim") of any payment of principal of, or interest on, the *Series 1993 Bonds*.

Each Bondholder, by its purchase of Series 1993 Bonds, and the Paying Agent hereby agrees that the Bond Insurer may at any time during the continuation of an insolvency proceeding direct all matters relating to such insolvency proceeding, including, without limitation, (i) all matters relating to any Preference Claim, (ii) the direction of any appeal of any order relating to any Preference Claim and (iii) the posting of any surety, supersedeas or performance bond pending any such appeal. In addition, and without limitation of the foregoing, the Bond Insurer shall be subrogated to the rights of the Paying Agent and each Bondholder in any insolvency proceeding to the extent it is subrogated pursuant to the Policy, including, without limitation, any rights of any party to an adversary proceeding action

with respect to any court order issued in connection with any such Insolvency Proceeding.

(G) The Issuer hereby agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) the administration, enforcement, defense or preservation of any rights in respect of the Ordinance including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the Issuer or any affiliate thereof) relating to the Ordinance, any party to the Ordinance or the transaction contemplated by the Related Documents (the "Transaction"), (ii) the pursuit of any remedies under the Ordinance or (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance whether or not executed or completed; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the Bond Insurer spent in connection with the actions described above; and the Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance.

(H) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the Issuer agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Bond Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the Bond Insurer within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants an auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by the Ordinance by reason of:

(i) any omission or action (other than of or by the Bond Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Series 1993 Bonds;

(ii) the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the Issuer in connection with any transaction arising from or relating to the Ordinance;

(iii) the violation by the Issuer of any law, rule or regulation, or any judgment, order or decree applicable to it;

(iv) the breach by the Issuer of any representation, warranty or covenant under the Ordinance or the occurrence, in respect of the Issuer, under the Ordinance of any "event of default" or any event which, with the giving of notice or lapse of time or both, would constitute any "event of default"; or

(v) any untrue statement or alleged untrue statement of a material fact contained in any Official Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an Official Statement and furnished by the Bond Insurer in writing expressly for use therein.

(I) The Issuer shall pay to the Bond Insurer interest on any and all amounts as are paid under the Policy and as are otherwise due to the Bond Insurer from the date paid by the Bond Insurer until payment thereof in full at the Late Payment Rate. "Late Payment Rate" shall mean a per annum rate equal to the lower of (i) three percent above the interest rate the Morgan Guaranty Trust Company of New York ("Morgan") publicly announces from time to time as its prime lending rate ("Prime Rate"), such interest rate to change on the effective date of each change in the announced Prime Rate and (ii) the maximum interest rate permitted to be paid by the Issuer under applicable law; provided that with respect to payments paid to and received by the Bond Insurer pursuant to its subrogation rights under the Ordinance the amount of the Series 1993 Bonds interest rate shall be subtracted from the Late Payment Rate. In the event Morgan ceases to announce its Prime Rate, the Prime Rate shall be the prime rate of such national bank as the Bond Insurer shall designate.

(J) Payments required to be made to the Bond Insurer shall be payable solely from the Net Revenues. The obligations set forth in (G)-(I) above shall survive discharge or termination of the Related Documents.

(K) The Bond Insurer shall be entitled to pay principal or interest on the Series 1993 Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Series 1993 Bonds as a result of acceleration of the maturity

thereof in accordance with this Ordinance, whether or not the Bond Insurer has received a Notice (as defined in the Bond Insurance Policy) of Nonpayment or a claim upon the Bond Insurance Policy.

(L) Notice of the optional or extraordinary redemption of Series 1993 Bonds, other than any notice that refers to Series 1993 Bonds that are to be redeemed from proceeds of a refunding bond issue or from amounts to be provided by the Bond Insurer in its discretion, may be given only if sufficient funds have been deposited with the Paying Agent to pay the applicable redemption price of the Series 1993 Bonds to be redeemed.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bond;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Bondholder or any Insurer; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder or any Insurer may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Bondholders, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Bonds;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Bondholders.

No remedy by the terms of this Ordinance conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder or any Insurer shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Bondholder shall have

the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Holders of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Bondholders will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, any trustee or Bondholder's committee shall consider the effect on the Bondholders as if no Municipal Bond Insurance Policy were then in effect.

Section 7.04. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

ARTICLE VIII

REGISTRAR AND PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 1993 Bonds shall be appointed pursuant to the Supplemental Resolution. The Issuer is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 8.02. Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the Issuer, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Bonds by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any

other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds Outstanding.

Section 8.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the Issuer and publishing in an Authorized Newspaper notice (or mailing such notice to each Bondholder in the event all Bonds are fully registered), specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the Issuer or by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the Issuer or by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Holders of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders or their attorneys duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Bondholders. The Issuer shall publish in an Authorized Newspaper (or mail to each Bondholder in the event all Bonds are fully registered) notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the Issuer

shall, immediately and without further act, be superseded by a Registrar appointed by such Bondholders. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 8.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.08.

Section 8.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

Section 8.12. Paying Agent. The Registrar shall also serve as the Paying Agent. The Registrar's acceptance of the duties and responsibilities of the Registrar expressed in Section 8.02 shall also include the trusts and the duties of Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the Issuer a written acceptance thereof. Any successor Paying Agent shall take such actions as may be necessary to ensure that the Bonds shall be and remain DTC-Eligible.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

## ARTICLE IX

### DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

#### Section 9.01. Defeasance; Discharge of Pledge of Ordinance.

If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Holders of the Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Bond Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments

shall be paid over to the Issuer as received by the Bond Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations, as such term is limited by the provisions in Section 1.01 hereof or such additional securities as shall be set forth in the Supplemental Resolution.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendment of Ordinance. Prior to issuance of the Series 1993 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 1993 Bonds, this Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Bondholder or other person, solely for the purpose of maintaining the tax-exempt status of the Bonds, provided that, in the event any of the Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Holders of 60% in aggregate principal amount of the Bonds then Outstanding and affected thereby and the Bond Insurer, which must be filed with the Clerk of the Issuer before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Holder of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

Section 10.02. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Bondholder or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be

acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Holder of any Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for 1 year after the date on

which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Bond Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Bonds shall look only to the Issuer for the payment of such Bonds; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer. If any of said Bonds is a coupon Bond, the Registrar or said Paying Agent shall also publish such notice, not less than 30 days prior to the date such moneys will be returned to the Issuer, in an Authorized Newspaper.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Registrar, the Depository Bank, the Original Purchaser or the Bond Insurer shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY

The City of Huntington  
City Hall  
Post Office Box 1659  
Huntington, West Virginia 25717  
Attention: Chairman, Sanitary Board

REGISTRAR AND PAYING AGENT

Bank One, West Virginia, Charleston,  
National Association  
Capitol and Virginia Streets  
P. O. Box 1113  
Charleston, West Virginia 25324  
Attention: Trust Officer

DEPOSITORY BANK

Bank One, West Virginia, Huntington,  
National Association  
P. O. Box 179  
Huntington, West Virginia 257066-0179  
Attention: Trust Officer

ORIGINAL PURCHASER

Raymond James & Associates, Inc.  
The Raymond James Financial Center  
880 Carillon Parkway  
P. O. Box 12749  
St. Petersburg, Florida 33733-2749  
Attention: Public Finance Department

BOND INSURER

Financial Security Assurance Inc.  
350 Park Avenue  
New York, New York 10022-6022  
Attention: Managing Director - Surveillance

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Council or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the

Registrar, the Paying Agent, the Holders of the Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

Section 10.13. Procedure on Enactment of Ordinance; Public Hearing. Upon adoption of this Ordinance, the Clerk is hereby authorized and directed to have an abstract of this Ordinance, which abstract has been determined by the Council of the Issuer to contain sufficient information to give notice of the contents of such Ordinance, published once each week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before the date stated below for the public hearing, in The Herald-Dispatch, a newspaper published and having a general circulation in The City of Huntington, together with a notice to all persons concerned, stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds described in this Ordinance and that any person interested may appear before the Council at the public hearing to be had at a public meeting of Council on the 12th day of October, 1993, at 7:30 p.m., in the meeting room of the Council in the City Hall of The City of Huntington and present protests, and that a certified copy of this Ordinance is on file with the Clerk for review by interested parties during the office hours of the Clerk. At such hearing all protests and suggestions shall be heard by the Council and it shall then take such action as it shall deem proper in the premises.

This Ordinance shall become effective following public hearing hereon in accordance with the Act.

First Reading: September 13, 1993

Second Reading: September 27, 1993

Effective following  
Public Hearing  
held on: October 12, 1993

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AND CORRECT AS TO FORM:

By \_\_\_\_\_  
City Attorney

CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by the City Council of THE CITY OF HUNTINGTON at a regular meeting of the City Council held at 7:30 p.m., on October 12, 1993, pursuant to proper notice, at which meeting a quorum was present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published once a week for two successive weeks in a newspaper having a general circulation in The City of Huntington, the first publication having been not less than 10 days prior to such public hearing.

Dated this 18th day of November, 1993.

[SEAL]

\_\_\_\_\_  
City Clerk

EXHIBIT A - BOND FORM

No. R- \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF HUNTINGTON (WEST VIRGINIA)  
SEWERAGE SYSTEM REFUNDING REVENUE BOND,  
SERIES 1993

INTEREST RATE                      MATURITY DATE                      BOND DATE                      CUSIP NO.

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF HUNTINGTON (West Virginia), a municipal corporation organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date specified above, or, if and to the extent that the Issuer shall default in the payment of interest on any Interest Payment Date, then this Bond shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Bond surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in each year, beginning \_\_\_\_\_ 1, 1993 (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not

defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the Issuer maintained by \_\_\_\_\_, \_\_\_\_\_, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent, in \_\_\_\_\_, West Virginia.

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of \$ \_\_\_\_\_ designated "The City of Huntington (West Virginia) Sewerage System Refunding Revenue Bonds, Series 1993" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated \_\_\_\_\_ 1, 1993, the proceeds of which are to be used, together with other funds of the Issuer, to refund in full The City of Huntington Sewerage System Refunding Revenue Bonds, Series 1987, of the Issuer outstanding in the aggregate principal amount of \$ \_\_\_\_\_ (the "Prior Bonds"), which Prior Bonds were issued to finance and refinance the cost of construction of certain additions, betterments and improvements to the sewerage system of the Issuer. The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and an ordinance duly enacted by the City Council of the Issuer on \_\_\_\_\_, 1993, and supplemented by a supplemental resolution adopted by said Council on \_\_\_\_\_, 1993 (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the

Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Issuer, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Registered Owners of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City Clerk in The City of Huntington, West Virginia.

The Bonds are additionally secured, but only to the extent described in the Statement of Insurance printed on the Bonds, by a policy of municipal bond insurance issued by [Name of Bond Insurer].

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Ordinance and as set forth in the following lettered paragraphs:

(A) Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, \_\_\_\_\_ are subject to redemption prior to maturity at the option of the Issuer on and after \_\_\_\_\_, \_\_\_\_\_, in whole at any time and in part on any Interest Payment Date, as directed by the Issuer, at the following redemption prices (expressed as percentages of the principal amount of Bonds to be redeemed), plus interest accrued thereon to the date fixed for redemption:

<u>Period During Which Redeemed</u> <u>(Dates Inclusive)</u>	<u>Redemption</u> <u>Price</u>
---	-----------------------------------

(B) Mandatory Sinking Fund Redemption. The Bonds maturing \_\_\_\_\_, are subject to annual mandatory redemption prior to maturity by random selection on \_\_\_\_\_ of the years and in the principal amounts set forth below, at the redemption price of 100% of the principal amount of each Bond so called for redemption plus interest accrued to the date fixed for redemption:

Bonds Maturing

<u>Year (       )</u>	<u>Principal Amount</u>
-----------------------	-------------------------

Bonds Maturing

<u>Year (       )</u>	<u>Principal Amount</u>
-----------------------	-------------------------

\* Final Maturity

In the event of any redemption of less than all outstanding Bonds, Bonds shall be selected for redemption by lot or in such other manner deemed appropriate by the Paying Agent. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and Maturity Dates.

Notice of any redemption of this Bond, unless waived, shall be given by the Registrar on behalf of the Issuer by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Registrar. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of this Bond.

The Bonds and the interest thereon are payable only from and are secured by the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, all moneys in the Sinking Fund established under the Ordinance, and the unexpended proceeds of the Bonds, and the Issuer hereby and in the Ordinance pledges such revenues and moneys to such payment. Said Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose and to make the other payments required by the Ordinance. This Bond does not constitute an indebtedness of the Issuer within any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Sinking Fund and said unexpended Bond proceeds. Under the Ordinance, the Issuer has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System and to revise the same from time to time as will always be sufficient to pay all operating expenses of the System and to produce revenues net of such operating expenses equal to at least \_\_\_\_\_ % of the maximum annual amount required to pay the interest and principal as the same become due and accomplish retirement of all obligations for the payment of which such revenues have or shall have been pledged, charged or otherwise encumbered and to make any required payments into the Reserve Account. Such required payments on behalf of the principal of and interest on the Bonds shall constitute a first charge upon all the revenues of the System. The Issuer has entered into certain further covenants with the registered owners of the Bonds, for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

All moneys received from the sale of the Bonds except for accrued interest thereon shall be applied solely to refund the Prior Bonds and pay all costs in connection therewith and costs of issuance of the Bonds, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the registered owners of said Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and

that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by said Issuer for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions of the Act is and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the within-described Ordinance.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

All provisions of the Ordinance, as defined on the reverse hereof, and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF HUNTINGTON (West Virginia) has caused this Bond to be signed by its Mayor, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

(Manual or Facsimile Signature)  
Mayor

ATTEST:

(Manual or Facsimile Signature)  
City Clerk

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Bond is one of the fully registered Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Bonds.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

STATEMENT OF INSURANCE

[Language to be Provided by Bond Insurer]

ASSIGNMENT

Social Security or Other Identifying Number of Assignee  
\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns  
and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_

to transfer the said Bond on the books kept for registration thereof  
with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must  
correspond with the name as it appears upon the face of the within  
Bond in every particular, without alteration or any change whatever.

11/29/93  
HUNTC.III  
43550/93001

THE CITY OF HUNTINGTON  
(WEST VIRGINIA)

\$7,100,000  
Sewerage System  
Refunding Revenue Bonds Series 1993

SUPPLEMENTAL RESOLUTION PROVIDING AS TO AMOUNT, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993, OF THE CITY; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT, A REGISTRAR AND PAYING AGENT'S AGREEMENT, AN ESCROW AGREEMENT, AN OFFICIAL STATEMENT AND OTHER INSTRUMENTS RELATING TO THE BONDS; APPOINTING A REGISTRAR, PAYING AGENT, ESCROW TRUSTEE AND DEPOSITORY BANK; IMPLEMENTING PROVISIONS REQUIRED AS A CONDITION TO OBTAINING A MUNICIPAL BOND INSURANCE POLICY; DESIGNATING THE BONDS AS "BANK QUALIFIED OBLIGATIONS" AND MAKING OTHER PROVISIONS AS TO THE BONDS AND THE REFUNDING.

WHEREAS, The City of Huntington (the "Issuer"), in the Counties of Cabell and Wayne, State of West Virginia, is a municipal corporation of said State, the governing body of which is its Council;

WHEREAS, this Council duly enacted on October 12, 1993, an ordinance (the "Ordinance") entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE CITY'S SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1987; THE ISSUANCE OF SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1993, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$9,500,000 THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ENACTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, the Ordinance provided for the issuance of the Issuer's Sewerage System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), in an aggregate principal amount not to exceed \$9,500,000 for the purpose of refunding the Issuer's outstanding Sewerage System Refunding Revenue Bonds, Series 1987 (the "Prior Bonds"), all in accordance with Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act");

WHEREAS, the Ordinance provided that the exact principal amount of the Series 1993 Bonds to be sold and the maturities, interest rates, redemption provisions and the price of the Bonds should be established, that a Paying Agent, Escrow Trustee, Registrar and Depository Bank be designated, that an Escrow Agreement and Registrar and Paying Agent's Agreement be approved, that Qualified Investments be set forth, that additional covenants of the Issuer relating to the Municipal Bond Insurance Policy and that any amendments required in order to obtain the Municipal Bond Insurance Policy be set forth and that other matters pertaining to the Series 1993 Bonds be provided for by resolution of this Council supplemental to and amendatory of the Ordinance upon receipt of a Bond Purchase Agreement acceptable to this Council;

WHEREAS, the Series 1993 Bonds are proposed to be purchased by Raymond James & Associates, Inc. (the "Original Purchaser"), pursuant to a Bond Purchase Agreement dated the date of adoption hereof (the "Purchase Agreement");

WHEREAS, the Issuer has obtained a commitment for a Municipal Bond Insurance Policy from Financial Security Assurance Inc. (the "Bond Insurer") and has determined that it is advantageous for the Issuer to obtain such Municipal Bond Insurance Policy and provide herein for certain matters required by the Bond Insurer as a condition to issuing the Municipal Bond Insurance Policy;

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance; and

WHEREAS, this Council deems it essential and desirable that this Resolution be adopted and that the Purchase Agreement, the Escrow Agreement and the Registrar and Paying Agent's Agreement hereinafter provided for be entered into by the Issuer, that the Official

Statement relating to the Series 1993 Bonds, hereinafter described, be approved, that the price of the Series 1993 Bonds, the maturity dates and amounts, the redemption provisions, the interest rates, and the exact principal amount of the Series 1993 Bonds be fixed hereby in the manner stated herein, that provisions required by the Bond Insurer as a condition to issuing its Municipal Bond Insurance Policy and amendments to the Ordinance required as a condition to obtaining the same and that other matters relating to the Series 1993 Bonds be herein provided for, all in accordance with said Ordinance;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF HUNTINGTON HEREBY RESOLVES:

Section 1. Pursuant to the Ordinance and the Act, this Resolution is adopted and there are hereby authorized and ordered to be issued the Series 1993 Bonds in the aggregate principal amount of \$7,100,000. The Series 1993 Bonds shall be dated November 1, 1993, upon original issuance, shall bear interest payable semiannually on May 1 and November 1 of each year, commencing May 1, 1994, and shall mature on November 1 in years as follows:

<u>Year</u> <u>(Nov. 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>
1994	\$ 360,000	2.700%	100%
1995	360,000	3.100	100
1996	75,000	3.300	100
1997	75,000	3.600	100
1998	80,000	3.800	100
1999	80,000	4.000	100
2000	90,000	4.100	100
2001	90,000	4.200	100
2002	100,000	4.300	99.630
2003	100,000	4.400	99.202
2004	105,000	4.600	99.572
2005	105,000	4.700	99.096
2006	110,000	4.875	99.286
2007	115,000	5.000	99.007
2018	2,520,000	5.250	97.286
2023	<u>2,735,000</u>	5.375	97.500
TOTAL	<u>\$7,100,000</u>		

Section 2. The Series 1993 Bonds shall not be subject to optional redemption prior to November 1, 2003. The Series 1993 Bonds

maturing on or after November 1, 2004, shall be redeemable prior to their stated dates of maturity at the option of the Issuer on or after November 1, 2003, in whole at any time or in part on any interest payment date, in such order of maturity as may be determined by the Issuer and by lot within a maturity, at the respective redemption prices (expressed as percentages of the principal amounts to be redeemed) set forth below, plus interest accrued to the date fixed for redemption:

<u>Period During Which Redeemed</u>	<u>Redemption Price</u>
November 1, 2003 to October 31, 2004	102%
November 1, 2004 to October 31, 2005	101
November 1, 2005 and thereafter	100

Section 3. The Series 1993 Bonds maturing November 1, 2018 and 2023 (the "Term Bonds") shall be subject to mandatory sinking fund redemption prior to maturity in part by random selection as may be determined by the Registrar, on November 1 of the years and in accordance with the following mandatory redemption schedule, at a redemption price equal to the principal amount thereof, plus interest accrued to the date fixed for redemption, without premium:

SERIES 1993 BONDS MATURING NOVEMBER 1, 2018

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
2008	\$125,000
2009	130,000
2010	140,000
2011	140,000
2012	150,000
2013	160,000
2014	170,000
2015	175,000
2016	420,000
2017	445,000
2018	465,000 *

\* By maturity

SERIES 1993 BONDS MATURING NOVEMBER 1, 2023

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
2019	\$490,000
2020	520,000
2021	545,000
2022	575,000
2023	605,000 *

\* By maturity

If a Series 1993 Bond is called for redemption in part, the Series 1993 Bond shall be renumbered and exchanged for a Series 1993 Bond of the amount then outstanding, without charge to the Bondholder.

All other provisions relating to the Series 1993 Bonds shall be as provided in the Ordinance, and the Series 1993 Bonds shall be in substantially the form provided in the Ordinance.

Section 4. The Purchase Agreement between the Original Purchaser and the Issuer, substantially in the form submitted to this meeting, and the execution and delivery (in multiple counterparts) by the Mayor and the sealing and attestation by the City Clerk on this day of the Purchase Agreement on behalf of the Issuer are hereby authorized, approved and directed. The Mayor shall execute and deliver the Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. Execution of the Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section. The price of the Series 1993 Bonds, pursuant to the Purchase Agreement, shall be \$6,874,745.25 representing the principal amount of \$7,100,000, less Underwriter's discount of \$83,993 and original issue discount of \$141,261.75, plus interest accrued from the date of the Series 1993 Bonds to their date of delivery. The Series 1993 Bonds are expected to be delivered on or about November 18, 1993.

Section 5. The Escrow Agreement by and among the Issuer, the West Virginia Municipal Bond Commission and the Escrow Trustee designated herein, to be dated as of the date of delivery of the Series 1993 Bonds, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor shall execute and deliver the Escrow Agreement with such changes, insertions and omissions as may be approved by the Mayor and the City Clerk is hereby

authorized and directed to affix the seal of the Issuer thereto and to attest the seal. Execution of the Escrow Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 6. The Official Statement dated November 3, 1993, to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary Official Statement dated October 29, 1993 (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby ratified and approved.

Section 7. The Registrar and Paying Agent's Agreement to be dated as of the date of delivery of the Series 1993 Bonds, by and between the Issuer and the Registrar/Paying Agent designated herein, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor shall execute and deliver the Registrar and Paying Agent's Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar and Paying Agent's Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 8. The Issuer does hereby determine that the Municipal Bond Insurance Policy offered by the Bond Insurer will result in an interest cost savings for the Issuer in excess of the premium to be paid by the Issuer for such Municipal Bond Insurance Policy, and accordingly ratifies the acceptance of the Commitment for Municipal Bond Insurance (the "Commitment"), dated October 22, 1993. The execution by the Mayor and delivery of the Commitment to the Bond Insurer is hereby ratified and approved.

Section 9. Pursuant to the Commitment, and, as permitted by Section 10.01 of the Ordinance, the following covenants and provisions which are required by the Bond Insurer as a condition precedent to issuance of its Municipal Bond Insurance Policy are hereby set forth, such covenants and provisions to be supplemental to and amendatory of, and controlling (notwithstanding anything to the contrary set forth in the Ordinance) with respect to the Ordinance and applicable to the Series 1993 Bonds:

(a) "Municipal Bond Insurance Policy" or "Policy" shall mean the municipal bond insurance policy issued by the Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Series 1993 Bonds.

(b) "Bond Insurer" shall mean Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto.

(c) Notice of the optional or extraordinary redemption of Series 1993 Bonds, other than any notice that refers to Series 1993 Bonds that are to be redeemed from proceeds of a refunding bond issue or from amounts to be provided by the Bond Insurer in its discretion, may be given only if sufficient funds have been deposited with the Paying Agent to pay the applicable redemption price of the Series 1993 Bonds to be redeemed.

(d) Upon the occurrence and continuance of an Event of Default which would require the Bond Insurer to make payments under the Policy, the Bond Insurer and its designated agent shall be provided with access to inspect and copy the registration books of the Issuer.

(e) "Qualified Investments" shall mean:

1. (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person

claiming through the custodian or to whom the custodian may be obligated.

2. Federal Housing Administration debentures.

3. The listed obligations of government sponsored agencies which are not backed by the full faith and credit of the United States of America:

-Federal Home Loan Mortgage Corporation (FHLMC)

Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

Senior Debt obligations

-Farm Credit Banks (formerly: Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)

Consolidated system-wide bonds and notes

-Federal Home Loan Banks (FHL Banks)

Consolidated debt obligations

-Federal National Mortgage Association (FNMA)

Senior debt obligations

Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

-Student Loan Marketing Association (SLMA)

Senior debt obligations (excluded are securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date)

-Financing Corporation (FICO)

Debt obligations

-Resolution Funding Corporation (REFCORP)

Debt obligations

4. Unsecured certificates of deposit, time deposits, and bankers' acceptances (having

maturities of not more than 30 days) of any bank the short-term obligations of which are rated 'A-1' or better by S&P.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$5 million.

6. Commercial paper (having original maturities of not more than 270 days) rated 'A-1+' by S&P and 'Prime-1' by Moody's.

7. Money market funds rated 'AAM' or 'AAM-G' by S&P, or better.

8. "State Obligations," which means:

A. Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated 'A3' by Moody's and 'A' by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

B. Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated 'A-1+' by S&P and 'Prime-1' by Moody's.

C. Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (A) above and rated 'AA' or better by S&P and 'Aa' or better by Moody's.

9. Pre-refunded municipal obligations rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service meeting the following requirements:

A. the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the

municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

B. the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

C. the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

D. the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

E. no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification; and

F. the cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements:

A. With any domestic bank the long term debt of which is rated 'AA' or better by S&P (so long as an opinion is

rendered that the repurchase agreement is a "repurchase agreement" and a "qualified financial contract" as defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and that such bank is subject to FIRREA), or any foreign bank the long term debt of which is rated at least 'AA' by S&P and 'AAA' by S&P and at least 'Aa' by Moody's; provided the term of such repurchase agreement is for one year or less.

B. With (1) any broker-dealer with "retail customers" which has, or the parent company of which has, long-term debt rated at least 'AA' by S&P and 'Aa' by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation (SIPC); or (2) any other entity approved by Financial Security, provided that:

a. The market value of the collateral is maintained (i) for United States Treasury Securities at the levels shown below under "Collateral Levels for United States Treasury Obligations" and (ii) for other collateral, at levels acceptable to Financial Security;

b. Failure to maintain the requisite collateral percentage will require the Issuer to liquidate the collateral.

c. The Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") has possession of the collateral or the collateral

has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

d. The repurchase agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

e. The transferor represents that the collateral is free and clear of any third-party liens or claims;

f. An opinion is rendered that the repurchase agreement is a "repurchase agreement" as defined in the United States Bankruptcy Code and, if the provider is a bank, that such bank is subject to FIRREA and the repurchase agreement is a "qualified financial contract" as defined in FIRREA;

g. There is or will be a written agreement governing every repurchase transaction;

h. The Issuer represents that it has no knowledge of any fraud involved in the repurchase transaction; and

i. The Issuer receives the opinion of counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such repurchase agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms.

11. Investment agreements with (A) a domestic bank the long-term debt of which is rated at least 'AA' by S&P and 'Aa' by Moody's (so long as an opinion is rendered that the bank is subject to FIRREA); or (B) a foreign bank the long-term debt of which is rated 'AAA' by S&P and at least 'Aa' by Moody's, or at least 'AA' by S&P and 'Aaa' by Moody's; provided, that, by the terms of the investment agreement:

(1) interest payments are to be made at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice (which notice may be amended or withdrawn at any time prior to the specified withdrawal date); provided that the Ordinance specifically requires the Issuer to give notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(3) the investment agreement shall state that is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof;

(4) a fixed guaranteed rate of interest is to be paid on invested funds and all future deposits, if any, required to be made to restore the amount of such funds to the level specified under the Ordinance;

(5) the term of the investment agreement does not exceed seven years or such longer term as shall be approved by the Bond Insurer;

(6) the Issuer receives the opinion of domestic counsel (which opinion shall be addressed to the Issuer and the Bond Insurer) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in form and substance acceptable;

(7) the investment agreement shall provide that if during its term

(a) the provider's rating by either S&P or Moody's falls below 'AA' or 'Aa,' respectively, or, with respect to a foreign bank, below the ratings of such provider at the delivery date of the investment agreement, the provider must, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, either (i) collateralize the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Issuer, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") United States Treasury Obligations which are free and clear of any third-party liens or claims at the Collateral Levels set forth below; or (ii) repay the principal of and accrued but unpaid interest on the investment, and

(b) the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below 'A,' or, with respect to a foreign bank, below "AA" or "Aa" by S&P or Moody's, as appropriate, the provider must, at the direction of the Issuer (who shall give

such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Issuer; and

(8) The investment agreement shall state and an opinion of counsel shall be rendered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(9) the investment agreement must provide that if during its term

(a) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Issuer (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate, and

(b) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Issuer or Paying Agent, as appropriate.

12. Any State-administered pool investment fund in which the Issuer is statutorily permitted or required to invest.

13. Subject to the prior written approval of the Bond Insurer, such other obligations as shall be permitted to be legal investments of the Issuer by the laws of the State.

COLLATERAL LEVELS FOR UNITED STATES TREASURY OBLIGATIONS

Frequency of valuation	Remaining maturity				
	<u>1 year or less</u>	<u>5 years or less</u>	<u>10 years or less</u>	<u>15 years or less</u>	<u>30 years or less</u>
Daily	102	105	106	108	114
Weekly	103	111	112	114	120
Monthly	105	117	120	125	133
Quarterly	107	120	130	133	140

VALUATION REQUIREMENTS:

- (1) On each valuation date the Issuer, the Paying Agent, or the custodian who shall confirm to the Issuer and the Paying Agent, shall, at the cost of the provider, value the market value (exclusive of accrued interest) of the collateral, which market value will be an amount equal to the requisite collateral percentage times the principal amount of the investment and unpaid accrued interest thereon that is being secured;
- (2) In the event the collateral level is below its collateral percentage on a valuation date, such percentage shall be restored within the following restoration periods: one business day for daily valuations, two business days for weekly and monthly valuations, and one month for quarterly valuations. [The use of different restoration periods affect the requisite collateral percentage.];
- (3) The Issuer shall terminate the repurchase agreement or investment agreement, as appropriate, upon a failure to maintain the requisite collateral percentage after the restoration period and, if not paid by the counterparty in federal funds against transfer of the collateral, liquidate the collateral.

(f) The prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Reserve Account.

(g) In the event the maturity of the Series 1993 Bonds is accelerated, the Bond Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued or accreted, as applicable, on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Bond Insurer's obligations under the Policy shall be fully discharged.

(h) The Bond Insurer shall be deemed to be the sole holder of the Series 1993 Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Series 1993 Bonds insured by it are entitled to take pursuant to Article VII of the Ordinance (pertaining to defaults and remedies).

(i) Copies of any modification or amendment to the Ordinance shall be sent to Standard & Poor's Corporation and Moody's Investors Service, Inc. at least 15 days prior to the effective date thereof.

(j) Rights of the Bond Insurer to direct or consent to Issuer or Bondholder actions under the Ordinance shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Policy is no longer in effect or the Bond Insurer asserts that the Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.

(k) In determining whether a payment default has occurred, no effect shall be given to payments made under the Policy.

(l) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Series 1993 Bonds, become subrogated to the

rights of the recipients of such payments in accordance with the terms of the Policy.

(m) The Bond Insurer shall have the right to advance any payment required to be made by the Issuer in order to prevent an event of default under this Ordinance and the Paying Agent shall be required to accept such advance. The Issuer shall be required to reimburse the Bond Insurer for any such advance.

(n) The rights granted to the Bond Insurer under the Ordinance to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Bondholders nor does such action evidence any position of the Bond Insurer, positive or negative, as to whether Bondholders consent is required in addition to consent of the Bond Insurer.

(o) Only (1) cash, (2) non-callable direct obligations of the United States of America, or (3) pre-refunded municipal obligation rated "AAA" and "Aaa" by S&P and Moody's, respectively (or any combination thereof) shall be authorized to be used to effect defeasance of the Series 1993 Bonds unless the Bond Insurer otherwise approves. Such obligations shall constitute "Defeasance Obligations." In the event of an advance refunding (i) the Issuer shall cause to be delivered, on the deposit date and upon any reinvestment of the defeasance amount, a report of an independent firm of nationally recognized certified public accountants "(Accountant)" verifying the sufficiency of the escrow established to pay the Series 1993 Bonds in full on the maturity date or earlier redemption thereof ("Verification"), (ii) the escrow agreement shall provide that no (A) substitution of a Defeasance Obligation shall be permitted except with another Defeasance Obligation and upon delivery of a new Verification and (B) reinvestment of a Defeasance Obligation shall

be permitted except as contemplated by the original Verification or upon delivery of a new Verification, and (iii) there shall be delivered an opinion of nationally recognized bond counsel to the effect that the Series 1993 Bonds are no longer "Outstanding" under the Ordinance; each Verification and defeasance opinion shall be addressed to the Issuer, the Paying Agent and the Bond Insurer. Series 1993 Bonds shall be deemed "Outstanding" under the Ordinance unless and until they are in fact paid and retired or the above criteria is met.

(p) Amounts paid by the Bond Insurer under the Policy shall not be deemed paid for purposes of the Ordinance and shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full.

(q) The notice address of the Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director - Surveillance.

(r) The Bond Insurer shall be included as a third party beneficiary to the Ordinance.

(s) The Bond Insurer shall be provided with the following information:

(i) upon delivery of the annual audited financial statements of the Issuer, a certificate of the chief financial officer of the Issuer stating that, to the best of such individual's knowledge following reasonable inquiry, no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) has occurred, or if an Event of Default has occurred, specifying the nature thereof and, if the Issuer has a right to cure pursuant to Section 7.04 of the Ordinance, stating in reasonable detail the steps,

if any, being taken by the Issuer to cure such Event of Default;

(ii) Official Statement, if any, prepared in connection with the issuance of additional bonds within 30 days after the bond sale;

(iii) Notice of any draw upon, or deficiency due to market fluctuation in the amount on deposit in, the Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Account Requirement and (ii) withdrawals in connection with a refunding of the Series 1993 Bonds;

(iv) Notice of the redemption of any of the Series 1993 Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(v) Notice of the resignation or removal of the Paying Agent and the appointment of, and acceptance of duties by, any successor thereto;

(vi) A full original transcript of all proceedings relating to the execution of any amendment or supplement to the Ordinance; and

(vii) Such additional information as the Bond Insurer from time to time may reasonably request.

(t) Claims Upon the Policy and Payments by and to the Bond Insurer.

(A) If, on the third Business Day prior to the related scheduled interest payment date or principal payment date or the date to which Bond maturity has been accelerated ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under this Ordinance, moneys sufficient to pay the principal of and interest on the Series 1993

Bonds due on such Payment Date, the Paying Agent shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent" by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Series 1993 Bonds due on such Payment Date, the Paying Agent shall make a claim under the Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Series 1993 Bonds and the amount required to pay principal of the Series 1993 Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day.

(C) All amounts paid by the Bond Insurer pursuant to (A) above, shall be deposited by the Paying Agent in a special fund hereby established and designated the "Policy Payments Account." Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Bond Insurer.

(D) The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon one Business Day's prior notice to the Paying Agent.

(E) Subject to and conditioned upon payment of any interest or principal with respect to the Series 1993 Bonds by or on behalf of the Bond Insurer, each Bondholder, by its purchase of Series 1993 Bonds, hereby assigns to the Bond Insurer, but only to the extent of all payments made by the Bond Insurer, all rights to the payment of interest or principal on the Series 1993 Bonds, including, without limitation,

any amounts due to the Bondholders in respect of securities law violations arising from the offer and sale of the Series 1993 Bonds, which are then due for payment. The Bond Insurer may exercise any option, vote, right, power or the like with respect to Series 1993 Bonds to the extent it has made a principal payment pursuant to the Policy. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to the Bond Insurer in respect of such payments. The Paying Agent shall take such action and deliver such instruments as may be reasonably requested or required by the Bond Insurer to effectuate the purpose or provisions of this clause (E).

(F) The Paying Agent shall promptly notify the Bond Insurer of either of the following as to which it has actual knowledge: (i) the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") and (ii) the making of any claim in connection with any insolvency proceeding seeking the avoidance as a preferential transfer (a "Preference Claim") of any payment of principal of, or interest on, the Series 1993 Bonds.

Each Bondholder, by its purchase of Series 1993 Bonds, and the Paying Agent hereby agrees that the Bond Insurer may at any time during the continuation of an insolvency proceeding direct all matters relating to such insolvency proceeding, including, without limitation, (i) all matters relating to any Preference Claim, (ii) the direction of any appeal of any order relating to any Preference Claim and (iii) the posting of any surety, supersedeas or performance bond pending any such appeal. In addition, and without limitation of the foregoing, the Bond Insurer shall be subrogated to the rights of the Paying Agent and each Bondholder in any insolvency proceeding to the extent it is subrogated pursuant to the Policy, including, without limitation, any rights of any party to an adversary proceeding action with respect to any

court order issued in connection with any such Insolvency Proceeding.

(G) The Issuer hereby agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) the administration, enforcement, defense or preservation of any rights in respect of the Ordinance including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the Issuer or any affiliate thereof) relating to the Ordinance, any party to the Ordinance or the transaction contemplated by the Related Documents (the "Transaction"), (ii) the pursuit of any remedies under the Ordinance or (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance whether or not executed or completed; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the Bond Insurer spent in connection with the actions described above; and the Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance.

(H) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the Issuer agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Bond Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the Bond Insurer within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to

the transactions contemplated by the Ordinance by reason of:

(i) any omission or action (other than of or by the Bond Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Series 1993 Bonds;

(ii) the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the Issuer in connection with any transaction arising from or relating to the Ordinance;

(iii) the violation by the Issuer of any law, rule or regulation, or any judgment, order or decree applicable to it;

(iv) the breach by the Issuer of any representation, warranty or covenant under the Ordinance or the occurrence, in respect of the Issuer, under the Ordinance of any "event of default" or any event which, with the giving of notice or lapse of time or both, would constitute any "event of default"; or

(v) any untrue statement or alleged untrue statement of a material fact contained in any Official Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an Official Statement and furnished by the Bond Insurer in writing expressly for use therein.

(I) The Issuer shall pay to the Bond Insurer interest on any and all amounts as are paid under the Policy and as are otherwise due to the Bond Insurer from the date paid by the Bond Insurer until payment thereof in full at the Late Payment Rate. "Late Payment Rate" shall mean a per annum rate equal to the lower of (i) three percent above the interest rate the Morgan Guaranty Trust Company of New York ("Morgan") publicly announces from time to time as its prime lending rate ("Prime Rate"), such interest rate to change on the effective date of each change in the announced Prime Rate and (ii) the maximum interest rate permitted to be paid by the Issuer under applicable law; provided that with respect to payments paid to and received by the Bond Insurer pursuant to its subrogation rights under the Ordinance the amount of the Series 1993 Bonds interest rate shall be subtracted from the Late Payment Rate. In the event Morgan ceases to announce its Prime Rate, the Prime Rate shall be the prime rate of such national bank as the Bond Insurer shall designate.

(J) Payments required to be made to the Bond Insurer shall be payable solely from the Net Revenues. The obligations set forth in (G)-(I) above shall survive discharge or termination of the Related Documents.

(K) The Bond Insurer shall be entitled to pay principal or interest on the Series 1993 Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Series 1993 Bonds as a result of acceleration of the maturity thereof in accordance with this Ordinance, whether or not the Bond Insurer has received a Notice (as defined in the Bond Insurance Policy) of Nonpayment or a claim upon the Bond Insurance Policy.

(u) Section 1.01 of the Ordinance (Definitions) is hereby amended with respect to the terms "Bond Year," "Dated Date," "Maximum Annual Debt Service" and "Reserve Account Requirement" to read as follows:

"Bond Year" means the 12 month period beginning on the anniversary of the Dated Date in each year and ending on the day prior to the anniversary date of the Dated Date in the following Year.

"Dated Date" means November 1, 1993.

"Maximum Annual Debt Service" means, at the time of computation, the greatest amount of Debt Service required to be paid on the Bonds for the then current or any succeeding Bond Year.

"Reserve Account Requirement" means, as of any date of calculation, the maximum amount of Debt Service that will come due on the Bonds in the then current or any succeeding Bond Year, assuming that the principal of any Term Bonds is deemed due on the earlier of their stated maturity date or the date on which they are required to be redeemed pursuant to mandatory sinking fund redemption.

(v) Section 6.08 of the Ordinance is hereby amended to read as follows:

Section 6.08. Additional Parity Bonds. No additional parity Bonds, as in this section defined, payable out of the Revenues of the System shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the construction of additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk of the Issuer a written statement by Independent Accountants, reciting the conclusion that the Net Revenues actually derived, from the System during the Fiscal Year preceding the date of the actual issuance of such additional parity Bonds, plus the increased annual Net Revenues expected to be received after the date of issuance of such parity Bonds shall not be less than 120% of the Maximum Annual Debt Service on the following:

- (1) The Series 1993 Bonds then Outstanding;
- (2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The additional parity Bonds then proposed to be issued.

The "increased annual Net Revenues expected to be received" as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such additional parity Bonds, and the increased Net Revenues to be available as a result of existing additional customers required by law to be served by the System upon completion of the facilities to be financed with the proceeds of any such additional parity Bonds, and shall not exceed the amount to be stated in the aforementioned certificate of Independent Accountants, which shall be filed in the office of the Clerk of the Issuer prior to the issuance of such additional parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "additional parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and

within the limitations of this section, payable from the Net Revenues of the System on a parity with the Series 1993 Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1993 Bonds and the Holders of any additional parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such additional parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

No additional parity Bonds shall be valid unless authenticated pursuant to Section 3.03. Prior to such authentication, registration, if applicable, and delivery, the Registrar shall receive those documents prescribed by Section 3.12 with respect to the Series 1993 Bonds, modified as deemed necessary by the Registrar to reflect the issuance of such additional parity Bonds.

The term "additional parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the Revenues of the System of which is subject to the prior and superior lien of the Bonds on such Revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made pursuant to Section 4.03(1), (2), (3) and (4) have first been paid. The Issuer shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and

source of and security for payment from such Revenues, with the Bonds except in the manner and under the conditions provided in this section.

No additional parity Bonds, as in this section defined, shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding (excluding the Depreciation Fund), and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the additional parity Bonds.

The Issuer may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds or portion thereof, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 10. The Issuer does hereby appoint and designate Bank One, West Virginia, Charleston, National Association, Charleston, West Virginia, for the purpose of serving in the capacities of Registrar, Paying Agent and Escrow Trustee.

Section 11. The Issuer does hereby appoint and designate Bank One, West Virginia, Huntington, National Association, Huntington, West Virginia, for the purpose of serving in the capacity of Depository Bank.

Section 12. The firm of Ernst & Young, Birmingham, Alabama, is hereby engaged for the purpose of verifying yield and sufficiency of the Escrow Fund.

Section 13. The firm of Smith Cochran & Hicks, Certified Public Accountants, Charleston, West Virginia, is hereby engaged for the purpose of calculating rebatable arbitrage on the proceeds of the Prior Bonds.

Section 14. The notice addresses for the Registrar, Paying Agent, Depository Bank and Bond Insurer shall be as follows:

REGISTRAR AND PAYING AGENT

Bank One, West Virginia, Charleston,  
National Association  
Capitol and Virginia Streets  
P. O. Box 1113  
Charleston, West Virginia 25324  
Attention: Trust Officer

DEPOSITORY BANK

Bank One, West Virginia, Huntington,  
National Association  
P. O. Box 179  
Huntington, West Virginia 25706-0179  
Attention: Trust Officer

BOND INSURER

Financial Security Assurance Inc.  
350 Park Avenue  
New York, New York 10022-6022  
Attention: Managing Director - Surveillance

Section 15. Based upon the actual principal amount, maturity schedule and interest rates for the Series 1993 Bonds, as set forth in Paragraph (1) hereof, it is hereby determined that the Series 1993 Bonds show a net savings to the Issuer after deducting all expenses of the refunding. Prior to delivery of the Series 1993 Bonds, the Issuer shall have obtained from Ernst & Young or such other independent certified public accountant acceptable to the Mayor a certification that the amount of savings stated to be achieved by the refunding shall in fact be correct, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 1993 Bonds and the net interest cost in dollars of the Prior Bonds. The Mayor is hereby authorized and directed to employ Ernest & Young or such another independent certified public accountant satisfactory to Bond Counsel to supply the certification required herein and to take other actions required in connection with the refunding.

Section 16. Under the provisions of the Act, and as provided in the Ordinance and the Series 1993 Bonds, the Series 1993 Bonds and the interest thereon do not constitute indebtedness of the Issuer within the meaning of any constitutional or statutory

provisions or limitations, but shall be payable solely from the revenues derived from the operation of the sewerage system of the Issuer, the Series 1993 Bonds Reserve Account and the Depreciation Fund established by the Ordinance and neither the credit nor the taxing power of the Issuer is pledged for, and no tax shall ever be levied for, payment of the Series 1993 Bonds and the interest thereon.

Section 17. The Issuer and all subordinate entities do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year 1993 and the Issuer hereby designates the Series 1993 Bonds as "qualified tax-exempt obligations," as defined in Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 18. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 1993 Bond issue, hereby and by the Ordinance approved and provided for, including, if needed, subscription forms for the purchase of United States Government Securities, a Depository Trust Company Letter of Representations and any forms or documents necessary to qualify the Series 1993 Bonds for sale under the "Blue Sky Laws" of any state, to the end that the Series 1993 Bonds may be delivered at the earliest practical date to the Original Purchaser, pursuant to the Purchase Agreement.

Section 19. The Escrow Trustee is hereby instructed to purchase from Raymond James & Associates, Inc. the Government Securities listed on Exhibit B to the Purchase Agreement or Substitute Securities in accordance with the provisions of the Purchase Agreement.

Section 20. The Mayor is hereby authorized and directed to transfer the balance in the Construction Trust Fund created for the Prior Bonds to the Escrow Fund. The Mayor is hereby authorized and directed to transfer from the Sinking Fund and Reserve Fund, created for the Prior Bonds, and held by the West Virginia Municipal Bond Commission the amounts set forth in the Escrow Agreement. Any balances in excess of the amount required to be deposited in the Escrow Fund shall be deposited in a special construction fund (the "Special Construction Fund"). Moneys held in the Special Construction Fund shall be utilized by the Sanitary Board for capital construction projects within the next three years.

Section 21. This Resolution shall be effective immediately.

Adopted this 3rd day of November, 1993.

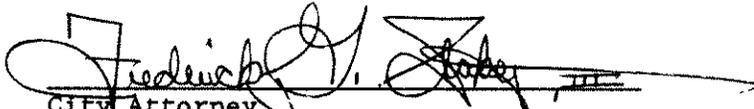
[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

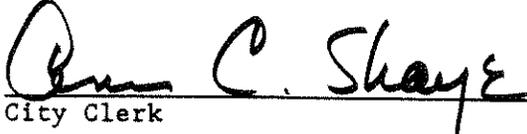
  
\_\_\_\_\_  
City Attorney

CERTIFICATION

Certified a true, correct and complete copy of a Supplemental Resolution duly adopted by the City Council of THE CITY OF HUNTINGTON at a special meeting of the City Council held at 5:00 p.m., on November 3, 1993, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this 18th day of November, 1993.

[SEAL]

  
City Clerk

11/16/93  
HUNTJ.K5  
43550/93001





These facilities are to serve a population equivalent of approximately 90,000 persons in the City of Huntington, the City of Kenova, the Town of Ceredo, Northern Wayne County Public Service District, Monel Park Public Service District, Spring Valley Public Service District, the former Ohio River Public Service District service area which is now an integral part of the Pea Ridge Public Service District, and environs, and discharge treated wastewater to the Ohio River at Mile Point 313.2.

**This permit is subject to the following terms and conditions:**

The information submitted on and with Permit Application No. WV0023159, dated the 31st day of March 1994, additional information, dated the 12th day of October 1994, additional information, received the 13th day of October 1994, additional information, received the 24th day of October 1994, and additional information, received the 22nd day of November 1994, are all hereby made terms and conditions of this Permit with like effect as if all such Permit application information was set forth herein, and with other conditions set forth in Sections A, B, C, D, E, F, G and H.

**A.1. D. CHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

During the period beginning April 7, 1995 and lasting through midnight, March 7, 2000 the permittee is authorized to discharge from outlet number(s) 001 - Discharge from the sewage treatment plant.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>		
	<u>(Quantity) lbs/day</u>	<u>Other Units (Specify)</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>	
Flow		17.0 MGD	Continuous	Measured	
Biochemical Oxygen Demand (5 Day)	4,253	30.0 mg/l	60.0 mg/l	Daily	24 Hr. Composite
Total Suspended Solids	4,253	30.0 mg/l	60.0 mg/l	Daily	24 Hr. Composite
Ammonia Nitrogen	2,127	15.0 mg/l	30.0 mg/l	Once/Week	24 Hr. Composite
Fecal Coliform		200 counts 100 ml	400 counts 100 ml	Daily	Grab
Cadmium, Total		0.021 mg/l	0.031 mg/l	1/Month*	24 Hr. Composite
Chromium, Hexavalent		0.162 mg/l	0.242 mg/l	1/Month*	24 Hr. Composite
Copper, Total		0.323 mg/l	0.485 mg/l	1/Quarter*	24 Hr. Composite
Lead, Total		0.061 mg/l	0.092 mg/l	1/Month*	24 Hr. Composite

\* Refer to Sections G.9 and H.5 for details.

(Continued on Page 4 of 21)

(Continued from page 3 of 21)

**A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

During the period beginning April 7, 1995 and lasting through midnight, March 7, 2000 the permittee is authorized to discharge from outlet number(s) 001 - Discharge from the sewage treatment plant.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	<u>(Quantity) lbs/day</u>	<u>Other Units (Specify)</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
	<u>Avg. Monthly</u>	<u>Max. Daily</u>	<u>Max. Daily</u>	
Nickel, Total	2.87 mg/l	4.30 mg/l	1/Quarter*	24 Hr. Composite
Silver, Total	0.194 mg/l	0.291 mg/l	1/Quarter*	24 Hr. Composite
Zinc, Total	1.45 mg/l	2.18 mg/l	1/Quarter*	24 Hr. Composite
Arsenic, Total	1.62 mg/l	2.42 mg/l	1/Quarter*	24 Hr. Composite
Mercury, Total	0.003 mg/l	0.005 mg/l	1/Month*	24 Hr. Composite
Cyanide, Total	0.081 mg/l	0.121 mg/l	1/Month*	Grab
Phenolics, Total	0.081 mg/l	0.121 mg/l	1/Month*	Grab
Chromium, Total	Monitor mg/l Only	Monitor mg/l Only	1/Quarter*	24 Hr. Composite

\* Refer to Sections G.9 and H.5 for details.

(Continued on Page 5 of 21)

**A.1. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

During the period beginning April 7, 1995 and lasting through midnight, March 7, 2000 the permittee is authorized to discharge from outlet number(s) 001 - Discharge from the sewage treatment plant

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	<u>(Quantity) lbs/day</u>	<u>Other Units (Specify)</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
	<u>Avg. Monthly</u>	<u>Max. Daily</u>	<u>Avg. Monthly</u>	<u>Max. Daily</u>
Acute Toxicity, Pimephales Promelas, 48 Hour Static			2.5 TU <sub>A</sub>	Annually* 24 Hour Composite
Acute Toxicity, Daphnia Magna or Pulex, 48 Hour Static			2.5 TU <sub>A</sub>	Annually* 24 Hour Composite

\* Refer to Sections G.8 and G.9 for details.

The pH shall not be less than 6.0 standard units and not greater than 9.0 standard units and shall be monitored daily by grab sampling.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent BOD<sub>5</sub> and Acute Toxicity samples shall be collected at a location immediately preceding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Title 46, Series 1, Section 3 of the West Virginia Legislative Rules issued pursuant to Chapter 22, Article 11.

**A.2. SEWER SYSTEM OVERFLOWS**

a) Outlet Numbers 002 through 024, listed below, serve as combined sewer relief points. Combined Sewer Overflows (CSOs) are allowed only when flows in combined sewers exceed conveyance capacities during wet weather periods. CSOs are point source discharges which must be provided technology based control measures in accordance with the Clean Water Act. Additional control measures may also have to be provided if determined necessary to comply with water quality standards. At a minimum, technology-based control measures must include best management practices or other noncapital intensive measures to minimize discharges and water quality impacts.

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
002	Krout Creek Pump Station Latitude 38°24'54"N Longitude 82°31'37"W	Krout Creek (Mile Point 0.2)
003	East Road Pump Station Latitude 38°24'15"N Longitude 82°31'00"W	Ohio River (Mile Point 312.5)
004	Fourpole Creek Pump Station Latitude 38°24'30"N Longitude 82°30'08"W	Fourpole Creek (Mile Point 0.1)
005	West 22nd Street Pump Station Latitude 38°24'43"N Longitude 82°29'35"W	Ohio River (Mile Point 311.2)
006	West 13th Street Pump Station Latitude 38°24'58"N Longitude 82°28'48"W	Ohio River (Mile Point 310.9)
007	West 7th Street Regulator Latitude 38°25'08"N Longitude 82°28'06"W	Ohio River (Mile Point 310.2)
008	1st Street Regulator Latitude 38°25'16"N Longitude 82°27'30"W	Ohio River (Mile Point 309.6)
009	4th Street Pump Station Latitude 38°25'20"N Longitude 82°27'13"W	Ohio River (Mile Point 308.9)
010	9th Street Regulator Latitude 38°25'27"N Longitude 82°26'40"W	Ohio River (Mile Point 308.4)

A.2. SEWER SYSTEM OVERFLOWS (Continued)

a) (Continued)

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
011	11th Street Regulator Latitude 38°25'30"N Longitude 82°26'29"W	Ohio River (Mile Point 308.2)
012	16th Street Regulator Latitude 38°25'37"N Longitude 82°25'58"W	Ohio River (Mile Point 307.8)
013	20th Street Regulator Latitude 38°25'47"N Longitude 82°25'28"W	Ohio River (Mile Point 307.2)
014	East 25th Street Diversion Chamber Latitude 38°26'00"N Longitude 82°24'53"W	Ohio River (Mile Point 306.6)
015	Division Street Regulator Latitude 38°26'10"N Longitude 82°24'23"W	Ohio River (Mile Point 306.1)
016	5th Avenue Pump Station Latitude 38°25'43"N Longitude 82°23'32"W	Guyandotte River (Mile Point 0.2)
017	Roby Hollow Pump Station Latitude 38°24'50"N Longitude 82°23'20"W	Guyandotte River (Mile Point 1.2)
018	Pat's Branch Pump Station Latitude 38°25'01"N Longitude 82°23'23"W	Guyandotte River (Mile Point 1.1)
019	Oak Street Pump Station Latitude 38°25'22"N Longitude 82°23'25"W	Guyandotte River (Mile Point 0.6)
020	Richmond Street Pump Station Latitude 38°25'52"N Longitude 82°23'13"W	Ohio River (Mile Point 305.0)
021	35th Street Pump Station Latitude 38°25'54"N Longitude 82°22'12"W	Ohio River (Mile Point 304.6)

A.2. SEWER SYSTEM OVERFLOWS (Continued)

a) (Continued)

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
022	B & O Regulator Latitude 38°24'23"N Longitude 82°29'54"W	Fourpole Creek (Mile Point 0.2)
023	Park Avenue Diversion Chamber Latitude 38°24'14"N Longitude 82°29'35"W	Fourpole Creek (Mile Point 0.5)
024	James River Road Regulator Latitude 38°24'16"N Longitude 82°24'00"W	Fourpole Creek (Mile Point 1.1)

b) The permittee shall provide and implement a plan of action for minimization of discharges and evaluation of water quality impacts and Long-Term Control Plan, if water quality impacts exist, in accordance with the following schedule:

<u>DESCRIPTION OF ACTIVITY</u>	<u>DUE DATE</u>
Submit a final plan to State (Plan Received on November 15, 1993)	November 15, 1993
Completion of planned minimization of discharges	May 15, 1995
Completion of planned evaluation of water quality impacts	<del>May 15, 1996</del> Jan. 1, 1997
Development of long-term control plan	<del>May 15, 1997</del> Jan. 1, 1999

c) Evaluation of Water Quality Impacts

- (1) Analysis of water quality upstream and downstream from CSO discharges to assess their impacts. Emphasis should be placed on critical periods, especially summer storm events following dry weather-low flow periods.
- (2) Monitoring of the rates and durations of representative discharges during varying rainfall conditions.
- (3) Analysis of the quality of representative discharges.

d) Development of Long-Term Control Plan

The permittee shall develop a Long-Term Control Plan (LTCP), if any water quality impacts are demonstrated and documented during an evaluation phase as outlined in Item A.2.b), or if this Office determines the water quality impacts exist.

e) Reporting Requirements

The permittee shall submit written quarterly progress reports detailing actions taken to meet the schedule presented in Section A.2.b).

**A.3. LIMITATIONS ON SPECIFIC SEWER SYSTEM OVERFLOWS**

a) Outlet Numbers 026 through 035, listed below, could bypass raw and/or partially treated sewage directly into the receiving stream.

<u>Outlet Number</u>	<u>Name and Location</u>	<u>Receiving Stream</u>
026	Edison Drive Latitude 38°24'33"N Longitude 82°24'37"W	Unnamed Tributary (Mile Point 0.75) of Fourpole Creek
027	Sandelwood Latitude 38°24'02"N Longitude 82°23'55"W	Unnamed Tributary (Mile Point 1.05) of Guyandotte River
028	Hillendale Latitude 38°23'42"N Longitude 82°24'13"W	Fourpole Creek (Mile Point 6.3)
029	Stamford Park Latitude 38°23'57"N Longitude 82°23'30"W	Unnamed Tributary (Mile Point 1.21) of Guyandotte River
030	Ferguson Road Latitude 38°24'12"N Longitude 82°23'37"W	Unnamed Tributary (Mile Point 0.8) of Guyandotte River
031	Garden Farms Latitude 38°23'35"N Longitude 82°22'46"W	Grapevine Creek (Mile Point 0.92)
032	Greenbrier No. 2 Latitude 38°24'03"N Longitude 82°27'06"W	Fourpole Creek (Mile Point 3.05)
033	Greenbrier No. 1 Latitude 38°24'04"N Longitude 82°27'08"W	Fourpole Creek (Mile Point 3.05)
034	Stonecrest Latitude 38°23'43"N Longitude 82°27'09"W	Hisey Fork (Mile Point 1.56)
035	Auburn Road Latitude 38°24'01"N Longitude 82°31'29"W	Fourpole Creek (Mile Point 0.22)

**A.3. LIMITATIONS ON SPECIFIC SEWER SYSTEM OVERFLOWS (Continued)**

- b) This documentation is for purposes of identification only. It is not to be interpreted as formal authorization to discharge from these outlets. Any discharge from these outlets shall be subject to the requirements of Section D.3 on Page 13 of 21 of this Permit. Bypass reports will be reviewed and the intentional use, or misuse, of the overflows will be subject to remedial and/or enforcement action.
  
- c) The documentation provided herein shall not constitute an affirmative defense in any enforcement action brought against the permittee for violations resultant to the discharges from these outlets.

**B. SCHEDULE OF COMPLIANCE**

1. The permittee shall achieve compliance with the provisions for waste treatment and the discharge limitations specified in this permit in accordance with the following schedule:

- a) On or Before  
April 7, 1995                      -Submit Revised Pretreatment Ordinance and Enforcement Response Plan as Required by Section H.7.a) on Page 20 of 21.
- b) On or Before  
May 1, 1995                        -Submit Local Limit Evaluations as Required by Section H.8 on Page 20 of 21.
- c) On or Before  
July 1, 1995                       -Formally Enact the Revised Ordinance as Required by Section H.7.b) on Page 20 of 21.

2. A report of compliance or noncompliance with the requirements of Section B.1.c) shall be submitted no later than the 15th day of July 1995.

## C. MANAGEMENT CONDITIONS

- 1. Duty to Comply**
  - (a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.
  - (b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- 2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit at least 180 days prior to expiration of the permit.
- 3. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.
- 4. Permit Actions**

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions.
- 5. Property Rights**

This permit does not convey any property rights of any sort or any exclusive privilege.
- 6. Signatory Requirements**

All applications, reports, or information submitted to the Chief shall be signed and certified as required in Title 46, Series 2, Section 4.6 of the West Virginia Legislative Rules.
- 7. Transfers**

This permit is not transferable to any person, except after notice to the Chief. The Chief may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.
- 8. Duty to Provide Information**

The permittee shall furnish to the Chief, within a reasonable specified time, any information which the Chief may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Chief, upon request, copies of records required to be kept by this permit.
- 9. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Chief, it shall promptly submit such facts or information.
- 10. Inspection and Entry**

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

  - a) Enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
  - b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
  - c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
  - d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any locations.
- 11. Permit Modification**

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22-5A-12 of the Code of West Virginia.
- 12. Water Quality**

The effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the State Environmental Quality Board.
- 13. Outlet Markers**

A permanent marker at the establishment shall be posted in accordance with Title 46, Series 3, Section 9 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.
- 14. Liabilities**
  - a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
  - b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
  - c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.
  - d) Nothing in C.14.a), b) and c) shall be construed to limit or prohibit any other authority the Chief may have under the State Water Pollution Control Act, Chapter 22, Article 11.

## D. OPERATION AND MAINTENANCE

### 1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by the WV Bureau of Public Health Regulations authorized under Chapter 16, Article 1, Public Health Laws, Code of West Virginia, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Chief may require a more highly skilled operator.

### 2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### 3. Bypass

#### a) Definitions

- (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of D.3.c) and D.3.d) of this permit.

- c) (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;
- (2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in F.2.b) of this permit.

#### d) Prohibition of bypass

- (1) Bypass is permitted only under the following conditions, and the Chief may take enforcement action against a permittee for bypass, unless:
  - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
  - (C) The permittee submitted notices as required under D.3.c) of this permit.
- (2) The Chief may approve an anticipated bypass, after considering its adverse effects, if the Chief determines that it will meet the three conditions listed in D.3.d)(1) of this permit.

### 4. Upset

- a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of D.4.c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
  - (2) The permitted facility was at the time being properly operated;
  - (3) The permittee submitted notice of the upset as required in F.2.b) of this permit.
  - (4) The permittee complied with any remedial measures required under C.3. of this permit.
- d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

### 5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Chief, any solids, sludges, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and a site subject to the approval by the Chief. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Chief in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

## E. MONITORING AND REPORTING

### 1. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

### 2. Reporting

- a) Permittee shall submit each month, according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A analytically determined to be in the plant effluent(s).
- b) The required DMRs should be received no later than 20 days following the end of the reporting period and be addressed to:

<b>Chief</b>	<b>Regional Administrator</b>
<b>Office of Water Resources</b>	<b>U. S. Environmental Protection Agency</b>
<b>1201 Greenbrier Street</b>	<b>Region III</b>
<b>Charleston, WV 25311-1088</b>	<b>841 Chestnut Building</b>
<b>Attention: Municipal Branch</b>	<b>Philadelphia, PA 19107</b>

- c) Enter reported average and maximum values under "Quantity" and "Concentration" in the units specified for each parameter, as appropriate.
- d) Specify the number of analyzed samples that exceed the allowable permit conditions in the columns labeled "N.E." (i.e., number exceeding).
- e) Specify frequency of analysis for each parameter as no. analyses/specified period (e.g. "3/month" is equivalent to 3 analyses performed every calendar month.) if continuous, enter "Cont.". The frequency listed on format is the minimum required.

### 3. Test Procedures

Samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136, unless other test procedures have been specified elsewhere in this permit.

### 4. Recording of Results

For each measurement or sample taken pursuant to the permit, the permittee shall record the following information.

- a) The date, exact place, and time of sampling or measurement;
- b) The date(s) analyses were performed;
- c) The individual(s) who performed the sampling or measurement;
- d) The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;
- e) The analytical techniques or methods used, and
- f) The results of such analyses.

Information not required by the DMR form is not to be submitted to this agency, but is to be retained as required in E.6.

### 5. Additional Monitoring by Permittee

If the permittee monitors any pollutant at any monitoring point specified in this permit more frequently than required by this permit, using approved test procedures or others as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

### 6. Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three(3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Chief at any time.

### 7. Definitions

- a) "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
- b) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- c) "Maximum daily discharge limitation" means the highest allowable daily discharge.
- d) "Composite Sample" is a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two hours.
- e) "Grab Sample" is an individual sample collected in less than 15 minutes.
- f) "i-s" = immersion stabilization - a calibrated device is immersed in the effluent stream until the reading is stabilized.
- g) The "daily average temperature" means the arithmetic average of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.
- h) The "daily maximum temperature" means the highest arithmetic average of the temperatures observed for any two(2) consecutive hours during a 24-hour day, or during the operating day if flows are of shorter duration.
- i) The "daily average fecal coliform" bacteria is the geometric average of all samples collected during the month.
- j) "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
- k) "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to pump capabilities, water meters and batch discharge volumes.
- l) "Noncontact cooling water" means the water that is contained in a leak-free system, i.e. no contact with any gas, liquid, or solid other than the container for transport; the water shall have no net poundage addition of any pollutant over intake water levels, exclusive of approved anti-fouling agents.

## F. OTHER REPORTING

### 1. Reporting Spills and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee for any responsibilities, liabilities, or penalties established pursuant to Title 46, Series 3, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 46, Series 3, Section 2 of the rules as they pertain to the reporting of spills and accidental discharges.

### 2. Immediate Reporting

- a) The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five(5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- b) The following shall also be reported immediately:
  - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
  - (2) Any upset which exceeds any effluent limitation in the permit; and
  - (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Chief in the permit to be reported immediately. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- c) The Chief may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d) Compliance with the requirements of F.2. of this section, shall not relieve a person of compliance with Title 46, Series 3, Section 2.

### 3. Reporting Requirements

- a) Planned changes. The permittee shall give notice to the Chief of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
  - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 2, Title 46; or
  - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. The notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under F.2. of this section.
- b) Anticipated noncompliance. The permittee shall give advance notice to the Chief of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c) In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Chief in writing as soon as they know or have reason to believe:
  - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (A) One hundred micrograms per liter (100 ug/l);
    - (B) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitro phenol; and for 2-methyl 4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
    - (C) Five(5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.9 of Series 2, Title 46;
    - (D) The level established by the Chief in accordance with Section 6.3.g. of Series 2, Title 46;
  - (2) That any activity has occurred or will occur which would result in any discharge (on a non-routine or infrequent basis) of a toxic which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (A) Five hundred micrograms per liter (500 ug/l);
    - (B) One milligram per liter (1 mg/l) for antimony;
    - (C) Ten(10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.7. of Series 2, Title 46;
    - (D) The level established by the Chief in accordance with Section 6.3.g. of Series 2, Title 46;
  - (3) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 2, Title 46 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.
  - (4) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 2, Title 46 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

### 4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in F.2.a).

### 5. Additional Noncompliance Reporting Requirement

For any noncompliance reports required to be submitted in writing by this Office, a copy shall also be forwarded to the U. S. Environmental Protection Agency at the location specified in E.2.b).

G. OTHER REQUIREMENTS

1. The herein described treatment works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected 100 year flood level and operability be maintained during the 25 year flood level.
2. The entire sewage treatment facility shall be adequately protected by fencing.
3. Continuous maintenance and operation of the listed sewage treatment facility shall be performed by or supervised by a certified operator possessing at least a class IV certificate for Waste Water Treatment Works Operators, issued by the State of West Virginia.
4. An instantaneous flow from the sewage treatment plant shall not exceed the peak design flow at any given time.
5. The arithmetic mean of values for effluent samples collected in a period of seven(7) consecutive days shall not exceed 45.0 mg/l for BOD<sub>5</sub> and TSS and 22.5 mg/l for NH<sub>3</sub>-N.
6. The arithmetic mean of the effluent values of the BOD<sub>5</sub> and TSS discharged during a period of 30 consecutive days shall not exceed 15 percent of the respective arithmetic mean of the influent values for these parameters during the same time period except as specifically authorized by the permitting authority.
7. The permittee shall submit, to the Chief, one(1) complete copy, of the Environmental Protection Agency application relative to their sludge management program, on or before the 7th day April 1995. Compliance with the terms and conditions of 40 CFR Part 503 shall, at this time, serve to fulfill the requirements of Section D.5, Removed Substances, on page 13 of 21 of this Permit, with respect to the sludge generated by the wastewater treatment facilities permitted herein.
8. The permittee shall perform acute whole effluent toxicity testing in accordance with the following.
  - a) The acute toxicity testing required herein shall be conducted in accordance with the procedures set out in the latest revision of Environmental Protection Agency Publication No. 600/4-90-027F, "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms."
    - (1) The 48 hour static acute toxicity testing shall be performed on an annual (1/year) basis during the period beginning on the effective date of the Permit and ending on the expiration date of the Permit.
    - (2) A 24 hour composite sample of the effluent shall be utilized for testing.

G. OTHER REQUIREMENTS (Continued)

- 8.a)(3) The tests shall be conducted using Pimephales promelas, fathead minnow, and Daphnia magna or Daphnia pulex as the test species.
- (4) Test results shall be reported on the attached Discharge Monitoring Report and copies of all test results provided as an attachment thereto.
- (5) The acute toxicity units,  $TU_A$ , required to be reported are calculated by dividing 100 by the  $LC_{50}$ .
- b) If whole effluent toxicity testing shows noncompliance with the specified limitations prescribed in Section A.1., the permittee shall immediately resample and test the effluent. This shall be performed within 30 days of the initial demonstration of noncompliance with the whole effluent toxicity discharge limitations prescribed herein. Copies of the retesting results shall be provided to this Office immediately upon completion of the test.
- c) If the second test shows compliance, whole effluent toxicity testing shall continue in accordance with the requirements as prescribed herein. However, if the second test shows noncompliance, this Office shall impose further requirements, as may be necessary, in order to obtain compliance with the whole effluent toxicity discharge limitations.
- d) This Office shall impose further requirements should the whole effluent toxicity testing results demonstrate an irregular pattern of noncompliance.
9. Publicly Owned Treatment Works effluent monitoring for cadmium, hexavalent chromium, copper, lead, nickel, silver, zinc, arsenic, mercury, cyanide, phenolics, chromium and acute toxicity shall be coordinated, if practicable, with discharges from the ash lagoon. The permittee shall provide a written notification, as an attachment to the Discharge Monitoring Report, if the sampling period being reported is not representative of a discharge from the ash lagoon.
10. The permittee shall perform the analyses of the effluent discharge limitations, as prescribed in Section A.1, for cadmium, hexavalent chromium, lead, mercury, cyanide, and phenolics for a period of six(6) consecutive months. Thereupon, if compliance, with the prescribed effluent discharge limitations for these parameters, has been demonstrated, the permittee shall be afforded an opportunity to request a reduction in the measurement frequency, to quarterly, for said parameters.

## H. PRETREATMENT REQUIREMENTS

1. The permittee shall implement the Industrial Pretreatment Program in accordance with the Clean Water Act and the regulations, 40 CFR Part 403, promulgated, thereunder. The program shall also be implemented in accordance with the program submission, approved on the 18th day of April 1984.
2. The permittee shall implement the program upon all industrial users of the Publicly Owned Treatment Works (POTW), irrespective of the geographical location of the users. The permittee shall secure and maintain adequate legal authority to control users located in Kenova, Ceredo, Northern Wayne Public Service District, Spring Valley Public Service District, Pea Ridge Public Service District for the integrated former Ohio River Public Service District service area, as well as any users located in unincorporated areas outside the corporate boundaries of the City of Huntington.
3. The permittee shall submit proposed changes to the approved program in accordance with 40 CFR Part 403.18, and shall obtain prior approval of Substantial Modifications as defined by 40 CFR Part 403.18(c).
4. The permittee's implementation of the program shall, at a minimum, meet the requirements listed below.
  - a) The permittee shall issue individual discharge permits to all significant industrial users (SIUs) as defined by 40 CFR Part 403.3(t). Permits shall contain the minimum requirements of 40 CFR Part 403.8(f)(1)(iii). The permittee shall reissue permits to SIUs prior to their expiration. Administrative extensions of expiring permits shall not be granted without written consent from the Chief.
  - b) The permittee shall inspect each SIU at least once per year. The annual inspection shall evaluate the manufacturing process, chemical storage areas, pretreatment facilities, spill prevention and control procedures, slug discharge control procedures, hazardous waste generation and disposal procedures, self-monitoring procedures and records.
  - c) The permittee shall sample and analyze the nondomestic wastewater discharge(s) of each SIU at least once per year. Such monitoring shall include all parameters limited in the SIU's permit and shall be performed in accordance with 40 CFR Part 136.
  - d) The permittee shall perform quarterly assessments of SIU compliance, and document the names of SIUs that demonstrate significant noncompliance (SNC) and the SNC criteria violated. The permittee shall publish the name of any SIU that demonstrates significant noncompliance in the pretreatment year, as required by 40 CFR Part 403.8(f)(2)(vii). Publication shall occur on or before the 15th day of August of each year.

## H. PRETREATMENT REQUIREMENTS (Continued)

- 4.e) The permittee shall take timely and appropriate enforcement for all instances of industrial user noncompliance in accordance with an Enforcement Response Plan as required by 40 CFR Part 403.8(f)(5).
  - f) The permittee shall ensure that adequate resources (equipment and personnel) are available to fully implement the pretreatment program.
5. The permittee shall conduct monitoring at its treatment plant, as follows:
- a) The POTW effluent shall be monitored as specified in Section A.1 on Pages 3, 4 and 5 of this Permit.
  - b) The POTW influent shall be monitored for arsenic, mercury, cadmium, chromium (total), copper, lead, nickel, silver, zinc, cyanide (total), selenium, and total phenolics. Monitoring frequency and sample type shall be the same as specified for each parameter in the effluent self-monitoring requirements of Section A.1, and influent monitoring shall be performed concurrent with effluent monitoring.
  - c) The permittee shall conduct annual (1/year) monitoring of the POTW influent for all priority pollutants not specified in Section A.1. For volatile organics, a minimum of four(4) individual samples shall be obtained. The samples may be analyzed separately or may be combined in the laboratory, using flask or purge device compositing techniques as specified in EPA's draft guidance, VOA Compositing Procedures, and the composite sample then analyzed. Twenty-four hour composite samples shall be obtained and analyzed for base neutrals, acid extractables, pesticides and metals.
  - d) The permittee shall conduct quarterly (4/year) monitoring of the treatment plant's sludge for arsenic, beryllium, cadmium, chromium (T), copper, lead, nickel, silver, mercury and zinc. Monitoring shall be performed on the influent sludgestream to the incinerator and analytical results shall be reported on a dry weight basis.
6. On or before the 31st day of August of each year, the permittee shall submit an annual report that describes the permittee's pretreatment implementation activities of the previous pretreatment implementation year (July 1 through June 30). The annual report shall include the following information:
- a) **SIU Listing** - Provide an updated list of all current SIUs. The list shall indicate which SIUs are subject to Categorical Pretreatment Standards, and the applicable standard.
  - b) **SIU Permits** - Provide a list of the issuance and expiration dates of each SIU permit, and the names of SIUs that are without a valid permit.

H. PRETREATMENT REQUIREMENTS (Continued)

- 6.c) **Sampling and Inspection** - Provide the number of inspections and sampling events performed by the permittee at SIUs and a listing of SIUs that were not sampled and those that were not inspected.
  - d) **Compliance and Enforcement** - Provide a summary of the violations of pretreatment standards and requirements that occurred during the year. Include the results of the quarterly SNC assessments required by Section H.4.d) above, and for each SIU that demonstrated SNC, describe the specific enforcement action taken and the current compliance status of the SIU. Also provide the numbers of each type of enforcement action taken by the permittee, and a copy of the published list of SIUs in SNC, as required by Section H.4.d) above.
  - e) **POTW Operations** - Provide a description of any interference, upset or permit violations experienced by the POTW which are attributable to the discharges of industrial users. Include a summary of the results of the influent, effluent and sludge monitoring required by Item 5 above.
7. The permittee shall revise the pretreatment provisions of its sewer use ordinance to provide the requisite legal authority for the Board to implement the program, as mandated by 40 CFR Part 403. The permittee shall also revise its Enforcement Response Plan to incorporate any necessary changes resulting from the revised ordinance. Such actions shall be performed in accordance with the following schedule:
    - a) On or before the 7th day of April 1995 - Submit Permit Modification Application with an approvable revised ordinance and an approvable revised Enforcement Response Plan.
    - b) On or before 1st day of July 1995 - Formally enact the approved, revised ordinance.
  8. The permittee shall technically reevaluate the adequacy of local limits for arsenic, cadmium, chromium, lead, mercury, nickel, total phenolics, and cyanide, and shall evaluate the necessity of local limit development for beryllium. Evaluations shall be based upon the effluent limitations of this Permit and the sludge quality standards and incinerator emission standards of 40 CFR Part 503. The results of the evaluations shall be submitted to the Chief on or before the 1st day of May 1995.
  9. The Chief and the U. S. EPA retain the right to require the permittee to institute changes to the pretreatment program if:
    - a) The requirements of 40 CFR Part 403 are not satisfied by program implementation;
    - b) Problems such as interference, pass through or sludge contamination develop;
    - c) Federal or State requirements change.

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit; with the plans and specifications submitted with Permit Application No. WV0023159, dated the 31st day of March, 1994; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the Environmental Quality Board and the director of the Division of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0023159, dated the 31st day of March, 1994, and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and for the invocation of all the enforcement procedures set forth in Article 11, Chapter 22 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Article 11, Chapter 22 of the Code of West Virginia and is transferable under the terms of Section 11 of said article.

By: Wanda A. A. A.  
Chief

MAS/jdm

STATE OF WEST VIRGINIA  
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
 DISCHARGE MONITORING REPORT

FACILITY NAME Huntington, City of; Sanitary Board  
 LOCATION OF FACILITY Huntington, Cabell/Wayne Counties  
 PERMIT NUMBER WV0023159 OUTLET NO. 001  
 WASTELOAD FOR MONTH OF 19

COMMERCIAL LABORATORY NAME  
 COMMERCIAL LABORATORY ADDRESS  
 INDIVIDUAL PERFORMING ANALYSES

Parameter	Quantity			Other Units			Measurement Frequency	Sample Type						
	Minimum	Avg. Monthly	Max. Daily	Units	N.E.	Minimum			Avg. Monthly	Max. Daily	Units	N.E.		
Flow, in	*****	*****	*****	***	**	*****	*****	MGD	**	**	*****	*****	*****	*****
Conduit or thru trmt. plant 50050	*****	*****	*****	***	**	*****	N/A		**	**	N/A	17.0	N/A	Continuous Measured
BOD, 5 day (20 Deg. C)	*****	*****	*****	***	**	*****	*****	mg/l	**	**	*****	*****	*****	*****
00310	N/A	4,253	8,507	lbs day	**	N/A	30.0	60.0	**	**	N/A	30.0	60.0	Daily 24 Hour Composite
Solids, Total	*****	*****	*****	***	**	*****	*****	mg/l	**	**	*****	*****	*****	*****
00530	N/A	4,253	8,507	lbs day	**	N/A	30.0	60.0	**	**	N/A	30.0	60.0	Daily 24 Hour Composite
Nitrogen, Ammonia	*****	*****	*****	***	**	*****	*****	mg/l	**	**	*****	*****	*****	*****
00610	N/A	2,127	4,253	lbs day	**	N/A	15.0	30.0	**	**	N/A	15.0	30.0	Once/Week 24 Hour Composite
pH	*****	*****	*****	***	**	*****	*****	Std.	**	**	*****	*****	*****	*****
00400	*****	*****	*****	***	**	*****	*****	Units	**	**	*****	*****	*****	Daily Grab
Limitation	*****	*****	*****	***	**	*****	*****	Count	**	**	*****	*****	*****	*****
Coliform, Fecal General	MF	Method	MPN	***	**	*****	*****	per 100ml	**	**	*****	*****	*****	Daily Grab
74055	Circle	Used	Used	***	**	*****	200	400	**	**	N/A	200	400	Daily Grab
Limitation	*****	*****	*****	***	**	*****	*****		**	**	*****	*****	*****	*****
Name of Principal Executive Officer	I certify under penalty of law that this document and all attachments were prepared under my directions or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.													
Title of Officer	Signature of Principal Executive Officer or Authorized Agent													
Date Completed														

STATE OF WEST VIRGINIA  
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
 DISCHARGE MONITORING REPORT

FACILITY NAME Huntington, City of; Sanitary Board  
 LOCATION OF FACILITY Huntington, Cabell/Wayne Counties  
 PERMIT NUMBER WV0023159 OUTLET NO. 001  
 WASTELOAD FOR MONTH OF 19

COMMERCIAL LABORATORY NAME  
 COMMERCIAL LABORATORY ADDRESS  
 INDIVIDUAL PERFORMING ANALYSES

Parameter	Quantity			Other Units			Units	N.E.	Measurement Frequency	Sample Type
	Minimum	Avg. Monthly	Max. Daily	Minimum	Avg. Monthly	Max. Daily				
Cadmium, Total 01027	Reported	*****	*****	*****	*****	*****	mg/l	**		
	Permit Limitation	N/A	N/A	N/A	0.021	0.031		**	Once/Month	24 Hour Composite
Chromium, Hexavalent 01032	Reported	*****	*****	*****	*****	*****	mg/l	**		
	Permit Limitation	N/A	N/A	N/A	0.162	0.242		**	Once/Month	24 Hour Composite
Lead, Total 01051	Reported	*****	*****	*****	*****	*****	mg/l	**		
	Permit Limitation	N/A	N/A	N/A	0.061	0.092		**	Once/Month	24 Hour Composite
Mercury, Total 71900	Reported	*****	*****	*****	*****	*****	mg/l	**		
	Permit Limitation	N/A	N/A	N/A	0.003	0.005		**	Once/Month	24 Hour Composite
Cyanide, Total 00720	Reported	*****	*****	*****	*****	*****	mg/l	**		
	Permit Limitation	N/A	N/A	N/A	0.081	0.121		**	Once/Month	Grab
Phenolics, Total 32730	Reported	*****	*****	*****	*****	*****	mg/l	**		
	Permit Limitation	N/A	N/A	N/A	0.081	0.121		**	Once/Month	Grab
<p>I certify under penalty of law that this document and all attachments were prepared under my directions or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.</p>										Date Completed
Name of Principal Executive Officer										Signature of Principal Executive Officer or Authorized Agent
Title of Officer										

STATE OF WEST VIRGINIA  
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
 DISCHARGE MONITORING REPORT

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COMMERCIAL LABORATORY NAME \_\_\_\_\_  
 COMMERCIAL LABORATORY ADDRESS \_\_\_\_\_  
 INDIVIDUAL PERFORMING ANALYSES \_\_\_\_\_

Parameter	Minimum			Quantity			Other Units			Measurement Frequency	Sample Type	
	Reported	Permit Limitation	Limitation	Avg. Monthly	Max. Daily	Units	N.E.	Minimum	Avg. Monthly			Max. Daily
Arsenic, Total	*****	*****	*****	*****	*****	*****	**	*****			mg/l	
	*****	*****	*****	*****	*****	*****	**	*****				**
Copper, Total	N/A	N/A	N/A	N/A	N/A	N/A	**	N/A	1.62	2.42		**
	*****	*****	*****	*****	*****	*****	**	*****				**
Nickel, Total	N/A	N/A	N/A	N/A	N/A	N/A	**	N/A	0.323	0.485		**
	*****	*****	*****	*****	*****	*****	**	*****				**
Silver, Total	N/A	N/A	N/A	N/A	N/A	N/A	**	N/A	2.87	4.30		**
	*****	*****	*****	*****	*****	*****	**	*****				**
Chromium, Total	N/A	N/A	N/A	N/A	N/A	N/A	**	N/A	0.194	0.291		**
	*****	*****	*****	*****	*****	*****	**	*****				**
Zinc, Total	N/A	N/A	N/A	N/A	N/A	N/A	**	N/A	Report Only	Report Only		**
	*****	*****	*****	*****	*****	*****	**	*****				**
Other	N/A	N/A	N/A	N/A	N/A	N/A	**	N/A	1.45	2.18		**
	*****	*****	*****	*****	*****	*****	**	*****				**
<p>I certify under penalty of law that this document and all attachments were prepared under my directions or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.</p>											Date Completed	
Name of Principal Executive Officer											Signature of Principal Executive Officer or Authorized Agent	
Title of Officer												

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Parameter	Quantity				Other Units				Measurement Frequency	Sample Type	
	Minimum	Avg.Monthly	Max.Daily	Units	N.E.	Minimum	Avg.Monthly	Max.Daily			Units
Toxicity, Acute, Pimephales Promelas, 48 Hour Static, 61427, 2F	*****	*****	*****	***	**	*****	*****	*****	TU <sup>a</sup>	**	Annually  24 Hour Composite
	*****	*****	*****	***	**	*****	*****	*****	**	**	
	*****	*****	*****	***	**	N/A	N/A	2.5	***	**	
	*****	*****	*****	***	**	*****	*****	*****	***	**	
Toxicity, Acute, Daphnia Magna or Pulex, 48 Hour Static 61425, 2F	*****	*****	*****	***	**	*****	*****	*****	TU <sup>a</sup>	**	Annually  24 Hour Composite
	*****	*****	*****	***	**	*****	*****	*****	**	**	
	*****	*****	*****	***	**	N/A	N/A	2.5	***	**	
	*****	*****	*****	***	**	*****	*****	*****	***	**	
Name of Principal Executive Officer	*****	*****	*****	***	**	*****	*****	*****		**	Date Completed
	*****	*****	*****	***	**	*****	*****	*****		**	
	*****	*****	*****	***	**	N/A	N/A	2.5		**	
	*****	*****	*****	***	**	*****	*****	*****		**	
<p>I certify under penalty of law that this document and all attachments were prepared under my directions or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.</p>											
<p>Title of Officer</p> <p>Signature of Principal Executive Officer                  Officer or Authorized Agent</p>											

**DIVISION OF ENVIRONMENTAL PROTECTION**1201 Greenbrier Street  
Charleston, WV 25311-1088GASTON CAPERTON  
GOVERNORDAVID C. CALLAGHAN  
DIRECTOR**NOTICE TO PERMITTEES**

The 1989 regular session of the West Virginia legislature revised the Water Pollution Control Act, Chapter 20, Article 5A of the West Virginia Code by adding Section 6a, now Chapter 22, Article 11, Section 10. This section of the Code requires all holders of a State water pollution control permit or a national pollutant discharge elimination system permit to be assessed an annual permit fee, based upon regulations promulgated by the Director of the Division of Natural Resources. The Director promulgated regulations to this effect and the current regulations have an effective date of July 1, 1993. The regulations establish an annual permit fee based upon the relative potential to degrade the waters of the State which, in most instances, relate to volume of discharge. However, for sewage facilities, the annual permit fee is based upon the number of customers served by the facility. You may contact the Secretary of State's Office, State Capitol Building, Charleston, West Virginia 25305, to obtain a copy of the regulations. The reference is Title 47, Legislative Rules of Department of Natural Resources, Series 26 Water Pollution Control Permit Fee Schedule.

Based upon the volume of discharge for which your facility is currently permitted or operating at, the number of customers served by your facility or for the category you fall within, pursuant to Section 7 of Title 47, Series 26, your annual permit fee is **\$2500**. This fee is due no later than the anniversary date of permit issuance in each year of the term of the permit or in the case of coverage under a general permit, the fee is due no later than the anniversary date of your coverage under the general permit. You will be invoiced by this agency at the appropriate time for the fee. Failure to submit the annual fee within one hundred and eighty(180) days of the due date will render your permit void.

EMERGENCY RESPONSE SPILL ALERT SYSTEM  
WEST VIRGINIA DIVISION OF NATURAL RESOURCES

REFERENCES:

West Virginia Legislative Rules Series 3, Section 2, State Water Resources Board, effective July 1, 1987.

RESPONSIBILITY FOR REPORTING:

Each and every person who may cause or be responsible for any spill or accidental discharge of pollutants into the waters of the State shall give immediate notification to the Water Resources' Emergency Notification Number, 1-800-642-3074. Such notification shall set forth insofar as possible and as soon thereafter as practical the time and place of such spill or discharge, type or types and quantity or quantities of the material or materials therein, action or actions taken to stop such spill or discharge and to minimize the polluting effect thereof, the measure or measures taken or to be taken in order to prevent a recurrence of any such spill or discharge and such additional information as may be requested by Water Resources. This also applies to spills to the waters of the State resulting from accidents to common carriers by highway, rail and water.

It shall be the responsibility of each industrial establishment or other entity discharging directly to a stream to have available the following information pertaining to those substances that are employed or handled in its operation in sufficiently large amounts as to constitute a hazard in case of an accidental spill or discharge into a public stream:

- 1) Potential toxicity in water to man, animals and aquatic life;
- 2) Details on analytical procedures for the quantitative estimation of such substances in water; and
- 3) Suggestions on safeguards or other precautionary measures to nullify the toxic effects of a substance once it has gotten into a stream.

Failure to furnish such information as required by Section 9, Article 5A, Chapter 20, Code of West Virginia shall be punishable under Section 19, Article 5A, Chapter 20, Code of West Virginia.

It shall be the responsibility of any person who causes or contributes in any way to the spill or accidental discharge of any pollutant or pollutants into State waters to immediately take any and all measures necessary to contain such spill or discharge. It shall further be the responsibility of such person to take any and all measures necessary to clean-up, remove, and otherwise render such spill or discharge harmless to the waters of the State.

When the Chief determines it necessary for the effective containment and abatement of spills and accidental discharges, the Chief may require the person or persons responsible for such spill or discharge to monitor affected waters in a manner prescribed by the Chief until the possibility of any adverse effect on the waters of the State no longer exists.

VOLUNTARY REPORTING BY LAW OFFICERS, U. S. COAST GUARD, LOCK MASTERS AND OTHERS:

In cases involving river and highway accidents where the responsible party may or may not be available to report the incident, law officers, U. S. Coast Guard, Lock Masters and other interested person should make the report.

WHO TO CONTACT: Notify the following number: 1-800-642-3074.

INFORMATION NEEDED: - Source of spill or discharge - Personnel at the scene  
- Location of incident - Actions initiated  
- Time of incident - Shipper/Manufacturer identification  
- Material spilled or discharged - Railcar/Truck identification number  
- Amount spilled or discharged - Container type  
- Toxicity of material spilled or discharged

## RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this permit which you are aggrieved by to the Environmental Quality Board by filing a NOTICE OF APPEAL on the form prescribed by the Board for this purpose, with the Board, in accordance with the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia within thirty(30) days after the date of receipt of the above permit.